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*The Executive*

Purchasing, the national magazine for purchasing agents.

**PURCHASER**



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Purchasing



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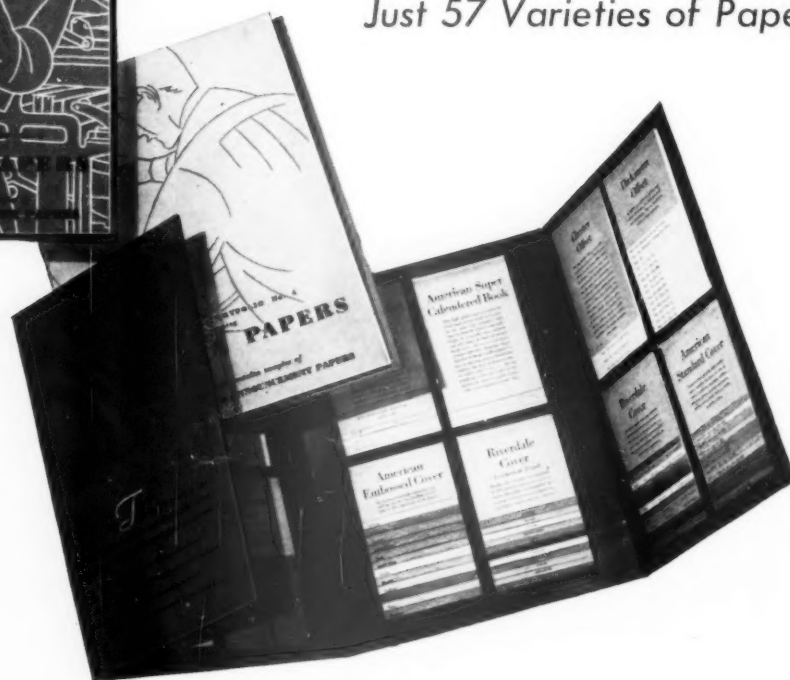
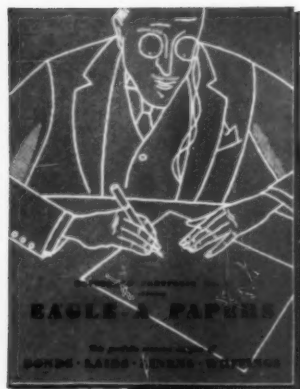
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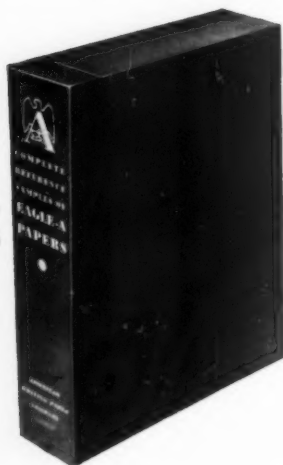
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# Editorial

✓ **WITH** this issue, **THE EXECUTIVE PURCHASER** makes its bow, a new national magazine devoted to the recognition of purchasing as an executive function in corporation management.

We are young in personnel; old in experience. Our staff is composed of economists and keen observers of purchasing practices. After all, the purchasing agent is an economist. And he is human. He wants neither lackadaisical editing nor highly specialized theorizing. His magazine should embody information that will be interesting and profitable.

The purchasing agent's magazine, as we see it, should not be burdened with price tabulations and other data available in his daily newspapers. The purchasing agent wants fundamental trends — digests of experiences — suggestions — ideas — interpretations.

Some of the "Old Guard" in the ranks of purchasing agents have questioned our editorial ability to reflect their interests in this important field. They have indicated that the purchasing agent's requirements were something akin to the highest specialization.

Others told us that the purchasing agent was easy to cater to editorially. They said he wanted only a legal editor, a commodity editor and some news of his friends and contemporaries.

We agree with neither viewpoint. We will strive to produce the best magazine possible, using only the choicest editorial matter available. The flow of "free publicity puffs" has already started. It reaches the office waste basket promptly. We do not propose to be the mouthpiece of any interests.

As our masthead declares, we are not the official organ of any association. The

publishing business is one thing, and association management is another. They should be mutually helpful. We will always work for the best interests of the National Association of Purchasing Agents, consistent with good publishing. And we are confident that the association will work with us, as long as it is consistent with their management policies.

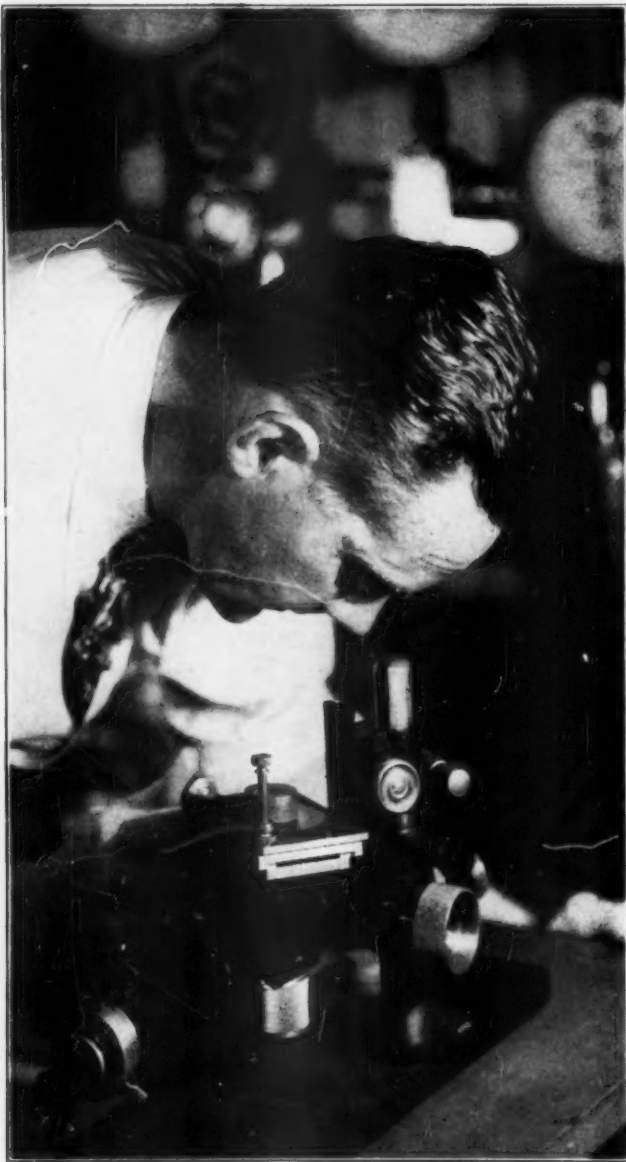
In this connection, it is appropriate to explain the change to **THE EXECUTIVE PURCHASER** from the original title of "The National Purchasing Agent" as announced in a folder sent to most of our readers several weeks ago.

In brief, this change was made because officials of Rogreen Publications and the National Association felt that some connection might be construed between the two. It was mutually felt that this impression might be confusing. So the change was made to the satisfaction of all concerned.

We will probably make mistakes — but never the same mistake twice. We will chart our course as we go. We will at all times maintain a vigorous editorial policy, standing for what we believe to be the best interests of purchasing agents. We expect to be criticized both constructively and destructively. We welcome both.

Just a word of appreciation for the generous response from hundreds of purchasing agents who have subscribed for **THE EXECUTIVE PURCHASER** before they had an opportunity of seeing it. We trust that we have measured up to your expectations, with the promise that succeeding issues will be "bigger and better."

We offer you **THE EXECUTIVE PURCHASER** as the finest business paper published; not just another magazine following established and out-dated custom.



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## STEEL - SERVICE

# Purchasing DOMINATES the Economic STAGE

• By B. J. SUMMERHAYS, *Consulting Economist*

The NRA, as a purchasing influence, is paramount in the minds of alert administrative and purchasing executives. A few days ago I was talking with the president of a large manufacturing company who explained how his purchasing agent had made it possible for his company to show a profit for the first time in three years. The simple procedure was the purchase of raw materials on long credit terms at deflated values which will enable him to pay for these raw materials with inflated dollars.

Of course, this purchasing agent was gambling on inflation. We are in an inflation trend, if a trend as such can be defined. The NRA is primarily an inflationary movement. By its operation we are inflating our cost structure through the raising of wages, reflected in manufacturing costs. At the same time pressure is being used to keep our sales price structure at deflated levels. This cannot long continue. As an economic problem, the recovery movement cannot possibly succeed without balanced inflation. We cannot continue arbitrarily to inflate the cost structure without inflating our price structure to a commensurate level.

The manufacturing cost structure is now going through the greatest arbitrary inflationary movement it has perhaps ever known, approximating 20 to 25 per cent. With costs inflated above the current levels of sales prices, the cost structure will either collapse, destroying the recovery

**THIS IS** the first of a series of articles on the economics of purchasing, written especially for **THE EXECUTIVE PURCHASER** by Benjamin J. Summerhays, widely known consulting economist. Mr. Summerhays's experience as writer, editor and consultant on United States Government economic problems fits him exceptionally well for the task of bringing home to the purchasing agent the realization that purchasing is today an executive function of greater importance than ever before.

movement, or the price structure will have to be inflated so as to bring price power in line with manufacturing costs.

Under our present financial structure there is not sufficient currency circulation to balance a one-sided inflation procedure, nor will there be sufficient currency circulation when the added manufacturing costs are distributed, without additional price support to meet these manufacturing costs.

We have two courses to pursue: inflate our sales price structure and thus insure a fair chance for the success of the recovery movement, or dump the recovery program and revert to the basic law of demand and supply, without artificial stimulants.

To turn aside from the recovery program at this time would cause serious confusion and would hasten the inevitable day of judgment. If I interpret President Roosevelt's

commitments correctly, he will not stand for this procedure. He seems to be willing to sink or swim on the merit of his recovery program. And so, whether or not we agree with the economic reasoning of the NIRA, it will probably be the basis of our future economic life.

Accepting this state of affairs, we must then accept the proposition that there will be some form of inflation to defend the position of the recovery program. "Well," you ask, "why delay inflation, if we must have it?" The proposition is simply this. The President cannot hasten an organized inflation program which will react unfavorably to the government financing program. Our government has a serious task in balancing the budget and providing for the additional finances to meet the demands of increased expenditures authorized to complete the general recovery legislation.

The government must buy its money at the cheapest possible rate. To inflate and then finance government requirements would be fatal. For instance, if the government requirements call for \$1,000 at deflated rates, with interest at 4 per cent, its financial requirements would be \$1,040. If it completes its financing program on this basis, then inflates, say 25 per cent, it will have 1,250 inflated dollars to pay its \$1,040 debt. If, on the other hand, the government financial program requires \$1,000 at deflated rates, and inflation of 25 per cent is announced prior to the com-



pletion of this program, it would be required to raise \$1,250 to meet its debt. And so I must string along with the President in his delay in announcing inflation until the government financial program is met.

When inflation is announced, it may, for psychological reasons, be announced as a stabilization program. This would perhaps be a sweeter pill for those favoring stabilization. Stabilization standpaters are virtually favoring the signing of a death warrant for the recovery program unless they are willing to modify their wishes so that a stabilization program would carry a sufficient inflationary complex to meet our price structure inflation demands.

Important influences for strict stabilization have been pressed upon the President and he may announce a stabilization policy instead of an inflation policy, but any such stabilization policy must of necessity have sufficient leverage to enable the sales price structure to balance the manufacturing costs structure. So by whatever name he calls it, the President will have to provide for adequate inflation to care for the requirements of the recovery program as soon as government finances are out of the way.

If inflation is announced, even with qualifications, we will have a sharp upturn in prices which will create a new flow of activity, followed by a lower ultimate settlement. If we have a so-called unlimited inflation, which I seriously doubt, we will have a day of judgment, sooner or later, which will parallel the collapse of 1929.

If stabilization is announced with a veiled and reasonable inflationary complex, prices will jockey up and down with a more definite settlement, the severity of which will depend upon the nature of the inflationary features of the stabilization policy, followed by a gradual and progressive upturn as business gains its equilibrium and confidence.

It is the consensus of opinion in official circles that inflation, in some form, is directly ahead as a national policy. Some believe it will come in two weeks, others in 30 to 60 days, but it will come.

What part does the purchasing agent play in this scheme of inflation? The success of your company largely depends upon the amount and nature of your net profits. Seldom, if ever, has the prudent purchasing agent enjoyed such an opportunity to make profits from purchases.

Buy your required materials now, at deflated prices, on the longest credit terms you can obtain. With inflation announced between the time of purchase and the time of payment, you will have inflated dollars with which to pay for your materials purchased at pre-inflation values. For the purposes of this discussion, let us agree that we will have a 25 per cent inflation, or an inflation level to meet inflated costs.

If you buy \$1,000 worth of materials now, on credit, at the present dollar value, you will have \$1,250 inflated dollars to pay this bill when inflation is announced. Thus you have made \$250 on your purchase, giving your company a marked advantage from the source. If you must buy for cash, buy only your immediate needs. Otherwise you are simply trading dollars at approximately even exchange.

In your purchasing programs there are some things to keep in mind. Buy only the materials you can use within a reasonable future period but buy them on the longest credit terms you can get. Don't buy for too long a haul just for the sake of buying. The higher the rate of inflation we have the sooner and lower the settlement will be, and if you overstock, you may find that you have over-bought at inflated values payable with deflated dollars.

If you have government contracts, protect yourself by buying all materials needed to fulfill these

government contracts now. The Comptroller General has ruled that the government has no authority to increase amounts of its contracts by the increased costs due to the recovery program.

Be careful in your purchasing relationships with small companies. The recovery act specifically provides that small enterprises shall not be oppressed and monopolies shall not be created. But the recovery program, as it is being administered, actually oppresses small enterprises because it is using its full influence to defeat sales price inflation, necessitating capital expenditures to meet cost inflation. Many of the small companies have no such capital to use and as a result many of them are falling by the wayside. This is of course creating monopolistic influences among the larger companies who are able to weather the capital drain.

Business operates in economic cycles. So do the executive forces of business. All such executive forces have their day in the economic spotlight.

Today it is the purchasing agent.

Your influence should be used with all its force to keep production in line with sales. In this cycle, production must be timed to a sales program based upon actual market absorption. If your products are not perishable or subject to style or service obsolescence, and if you have a strong repeater, you can safely produce ahead for a reasonable future period and you can make your purchases, on credit, accordingly to great financial advantage.

The purchasing agent who does not use his influence in timing production and purchases to market absorption, will wake up some day to find that he is holding the bag on an overload. This will place the company in an embarrassing position from which it may never recover.

So, Mr. Purchasing Agent, today is the day of your greatest influence—make the most of it.



# ARE YOU FORGING A STRONGER BUSINESS in THIS DAY of NATIONAL RECOVERY?

This is the task that confronts management today. It calls for the highest type of executive ability and the men who do this work need the best tools they can obtain.



Individual Recovery depends upon individual action.

*"When a native is sick he will do nothing to help himself. Instead of taking the medicine we give him he ties the bottle on a string around his neck and expects an immediate cure."*

—Report of medical missionary.

A certain type of business man is going to take the provisions of the National Recovery Act as the native took his medicine, on a string around his neck. This man will "expect an immediate cure" without further effort on his part.

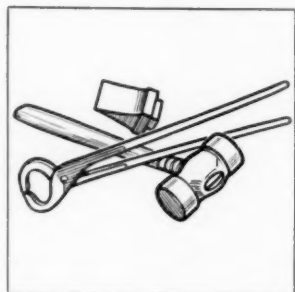
Wiser business men are giving the Act their vigorous and continued support. They understand that recovery must come from hard work, that it must begin at home, within their own business, and that they must ACT for themselves to bring this about.

They seek the best and quickest way of doing this.

As Director of Purchases, will you give these men the tools that they need to help them do their best work?

## Costing Less, Achieving More

Your executives work with factors that involve great investments. They deal with the very fabric and foundation of your business. Is your executive provided with sufficient and proper tools of standard quality?



Physically these tools of the executive workman consist of paper and printing: the instructions, orders, letters, records, directions and printed forms that are used every hour in the day, to get things done.

## Doing the Routine Work Each Day

Every business has worked out its own methods for handling the accuracy and rapidity of routine. Printed forms and records always play an important role. A part of the destiny of your business is carried by each piece of paper, each letter, order, record and instruction used daily in your office and plant. The loss of a single piece of paper temporarily can disorganize a whole series of operations. Good paper and printing are necessary to the smooth working of a business.

Have you sufficient supplies of these papers and printing tools? Replace the ones that are missing. Sharpen the ones that are dull. Be sure that the tools you reorder meet the needs of your business today.

The lack of a form or written instruction may cost a thousand times more than a year's supply of printing.

## Paper

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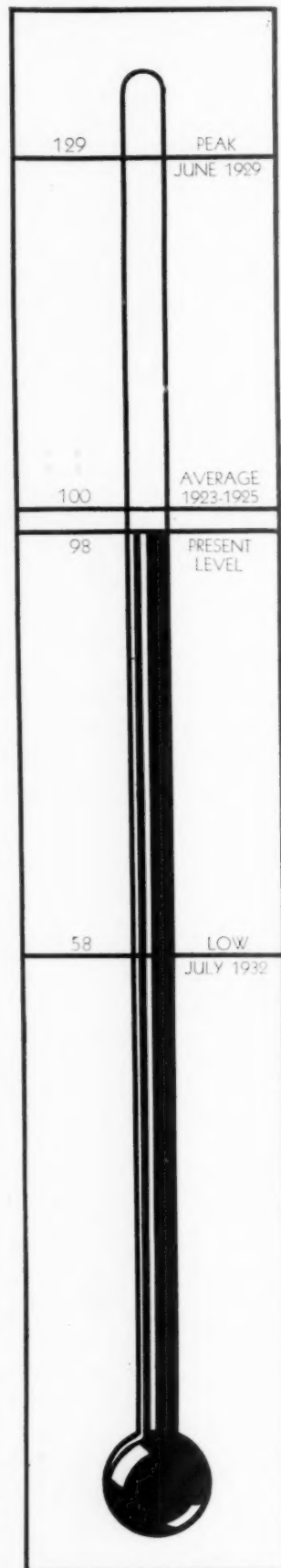
# Pulse of Business

Processing taxes, acreage reductions, price fixing, inflation, minimum wages, government buying—these are only a few of the elements which now complicate the movement of commodity prices. The old law of supply and demand has been annulled, so to speak, by the recent powers granted the executive branch of the government by the legislative body.

In addition to announcing that the price level would be raised definitely so far as domestic prices are concerned, the government made a similar statement at the World Economic Conference and thus prevented action there on problems which did not take price into consideration. Never in the history of the country has a government announced it would establish minimum prices for the important basic commodities, and ordinarily a statement of this sort would be of little value, but in order to make good its pledge the authorities obtained power which would aid them in attaining their goal.

Following the granting of these powers through the Agricultural Adjustment Act, the National Recovery Act, etc., commodity markets, in terms of American dollars, advanced sharply in most cases between March and July. As shown on the chart on the opposite page, average prices of 784 commodities increased from 60 to 69 per cent of the 1926 monthly average, a gain of about 15 per cent. At the same time farm prices increased almost 50 per cent and raw materials about 25 per cent. Excluding farm products, raw material prices, in general, dropped to lower levels early this year than did any of the major divisions of the Department of Labor's index, and the gain to date has been about half that shown in farm prices.

This price increase, in general, was largely speculative, considerable buying being done because of a fear of higher prices, though in some cases the statistical position did improve. Prior to Aug. 1 little real inflation was apparent; the bond buying program of the reserve banks has proceeded at a very nominal



**INDUSTRIAL PRODUCTION**

rate; money in circulation has declined; the printing of paper money has not been resorted to, to any extent; and the processing taxes had not yet been levied. In terms of gold, commodity prices were lower in August than in March, though this has little bearing on the domestic situation, affecting only goods entering into foreign trade.

The sharp drop in prices in late July was somewhat expected after so rapid an increase, but it was alarming to the administration which is definitely committed to raise prices. In most circles it is felt that the ultimate aim is the level prevailing in 1926. The gain from the March low has been, as before stated, about 15 per cent, but if the goal set is to be attained, a further rise of about 66 per cent in the average must be brought about.

Barring a resort to real inflation through printing of paper money, this is a difficult task, and were it not for the extraordinary executive powers, several of which have not been resorted to as yet, it might be thought almost impossible. At present all efforts are being expended on raising as well as spreading mass purchasing power through the NRA and the codes of minimum wages and maximum hours so that more goods can be bought at the higher prices.

Not only is industrial purchasing power to be raised, but agricultural as well, through the various special payments being made for acreage adjustments of wheat, cotton, and tobacco, the purchase of hogs (and corn indirectly) so as to remove a large supply from the market and turn it into relief channels as was done with wheat a year ago, in the latter case to little avail. With the movement already started upward, however, and pay rolls increasing, chances of success are better now than in 1932 when the trend was still definitely downward.

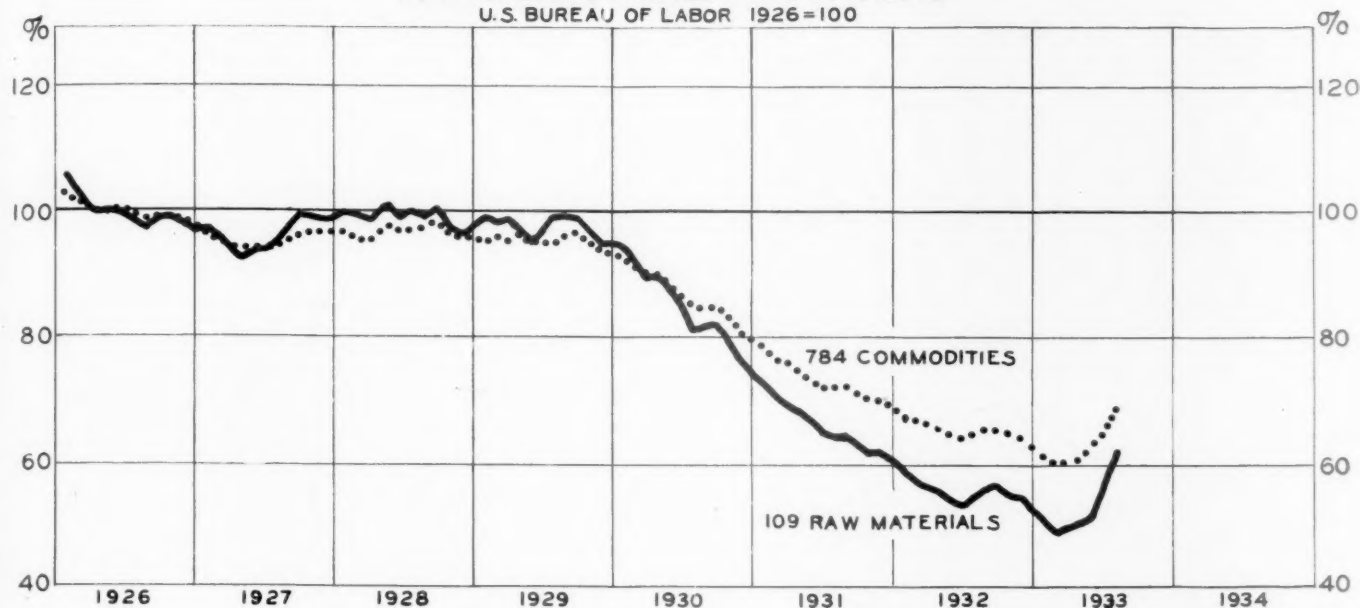
As yet the new experiment has just begun, and there are many unfavorable factors which still need to be corrected and difficulties to be overcome. But never before has so gigantic a task been

*Continued on page 36*

# Commodities

## WHOLESALE PRICES

U.S. BUREAU OF LABOR 1926=100



### STEEL

Extension of most steel prices into the fourth quarter had little effect on buying in early September. Operations in general averaged 42 per cent of capacity in the week following Labor Day. Adoption of steel code, carrying with it higher labor costs, is expected to affect prices, though not immediately.

### COPPER

Refined copper remains at nine cents, although a little business at 8¾ was reported in late August. Considerable metal buying has occurred recently, but production and stock figures of the industry are not available, though the latter are thought to be large. The copper code is expected to result in higher prices.

### ZINC

A slight decline in zinc prices occurred recently following weakness in foreign demand. This caused some increased domestic buying. A rise of about 75 per cent in raw zinc prices has occurred this year, but the current level is still below the 1927-1929 average. Refinery stocks are slightly smaller than a year ago.

### OIL

Higher oil and gasoline prices are expected to result from the code, effective Sept. 2. Regulation of production is an important factor in an industry with so large a potential supply and the Administration becomes dictator regarding production and prices. Output was reduced 1/9 by order of Committee in September.

### COAL

Increased demand for coal of all sizes caused prices to advance recently and the effects of the strike have about disappeared. Coal production now exceeds 1932 and 1931. Coke prices have increased 100 per cent this year and are now above the 1927-1929 average. Stocks of coal above ground are lower than since 1920.

### RUBBER

Restriction proposals from Holland caused little change in rubber markets; they were similar to those previously rejected as impractical. Prices are about two cents below the peak touched this year, but up about 250 per cent from the low. Rubber consumption has increased sharply and stocks are down 18 per cent, though they remain large compared with previous years.

### LUMBER

A contraction in lumber buying occurred in August and early September, and output in the latest week was lower than since the first week of July. Dealers recently increased depleted stocks in anticipation of higher prices, but little retail buying has been reported. Prices continue much above a year ago, though slightly below the average of past years.

### COTTON

A rather sharp decline, 20 to 25 per cent, in cotton mill activity appeared in August following imposition of processing tax of 4.2 cents a pound. Buying in late August and early September was reported below production, but this partly reflected a reaction from the heavy sales of June and July. Cotton on the latest date was quoted at nine cents a pound.

### PAPER

Output of all types of paper and boxboard increased sharply in recent months and a shortage of waste papers was reported. Stocks of paper are about 24 per cent smaller than a year ago and recent price advances have been maintained. Boxboard demand has been unusually active.





Ernest H. Smith

THE purchasing agent of schools, universities, hospitals, and similar institutions is in the spotlight today. The other executives of these institutions are looking to him for increased savings. This means he must be kept informed, must read much, digest the sound advice and pass up the rest as loose talk.

The school or institution floundering without a purchasing agent is to be pitied, because the buying cannot be efficient where more than one man is responsible. In some schools, several individuals do the ordering, and one cannot expect much good to come from such a chaotic condition. This article is directed to executives of the better organized institutions, those who cannot afford the loose methods practiced by so many others.

Since 1929 the purchasing agent has had things largely his own way. He was able to improve on his own accomplishments almost every time he placed a substantial order. It was a buyer's market. During this period of four years a great amount of inferior merchandise was manufactured. The responsibility on the purchasing agent was therefore greatly increased. He had to tear things apart to see what he was buying.

Many purchasing agents changed from their regular sources of supply and bought at a price, only to find their purchases were ill-

# Institutional Buying and its Problems

by

ERNEST H. SMITH, *Purchasing Consultant*  
formerly Purchasing Agent, University of Chicago

advised. These price-buyers later looked for adjustments on deficiencies, discovered their suppliers were not to be found, or that the adjustments were not forthcoming.

The wise purchasing agent remained with the reliable sources of supply, purchased high quality goods and was able to make a splendid record.

THE INSTITUTIONAL purchasing agent is confronted with a problem. The National Industrial Recovery Act is the reason. Rising prices in one industry will be absorbed in other industries by boosts in their own prices. And so on around the circle. But where do the university, the hospital, the state, county, municipal and town-supported institutions come into the picture? They reap not neither do they sow. They are budget supported and by budget they operate. How will rising prices affect them? Their incomes have not been increased; many of them have been cut.

DISCOUNTS have been the vogue among firms supplying these institutions. Will they be eliminated by the NRA? Is the day of discounts past? Hundreds of purchasing agents for institutions the country over want to know "Who Will Feed The Bluebird?"

Past accomplishments of the alert purchasing agent are insignificant when compared to his potential achievements immediately ahead, made possible by changed conditions and by the dire need for intelligent economies.

The most vital problems facing the institutional purchasing agent

today, with suggestions for meeting them, are presented below.

• • •

1. Existing contracts and standing orders made months ago to protect the institution against higher prices are now subject to price advances, according to the new code regulations. What is the position of the purchasing agent in this respect?

The purchasing agent who has confined his purchases and contracts to reliable sources of supply has little to fear with respect to price increases on present contracts. Merchants recognize the value of good customers' accounts and those who patronized him in dull times will be given consideration now. The seller will "go along" with the buyer, seeing his contracts through to fulfillment without unwarranted price increase.

It is the wise buyer who made these contracts months ago, covering "requirements as needed" for a specific period.

In the event the purchasing agent is informed of such price increases, he should point out to the vendor that the Industrial Recovery Act is primarily in the interests of reviving industries, and that industries are in position to increase their prices to other industries, while the educational institutions operating on a budget system cannot add to their income.

The purchasing agent who did so protect his institution should canvass his contract file and pre-



pare schedules for his executives to show how savings have been effected.

• • •

2. Budgets have been reduced—prices have gone up. How can the purchasing agent assist in balancing the budget?

Educational institutions' budgets have been drastically cut. There is nothing to justify the opinion that budgets will be increased in the near future. We might as well recognize that we are operating under changed conditions from those when budgets were liberal. In other words, we must look at these present reduced budgets as nearer normal, the budgets of the past as abnormal.

The effect of the National Industrial Recovery Act will greatly benefit the lower wage-earning class, will reduce the relief payrolls, but will not bring new income to institutions.

The purchasing agent is given the opportunity to show how he can improve the financial condition of his institution. This is a definite challenge to his resourcefulness. He can achieve immediate

results by helping make the funds go farther. One way he can accomplish these results is to list all equipment not being used to its fullest extent, and by changing it around from one office to another frequently meet new demands without any cash outlay.

If he is charged with encroaching on the property rights of other departments because of some time-worn regulation that the equipment belongs to specific departments, it is time such rules were broken. No individual, or group of individuals, should be permitted to stand in the way of possible economies of this sort simply because their budget paid for these items some years ago. The equipment should be available to the department most needing it.

This is only one of many ways that the purchasing agent can meet the requirements of the departments by using resourcefulness, and the first question he should ask himself as he looks over the day's orders is, "What have we on hand that might fill this need?" The departments, for the most part, will be delighted with this

sort of cooperation and the purchasing agent will establish a new record of accomplishment.

• • •

3. The sales tax was not provided for in the budget. Is there anything the purchasing agent can do to relieve at least a part of this burden?

Yes. The purchasing agent should familiarize himself with the regulations governing this tax assessment in his state. More than one purchasing agent has been able to adjust his routine and legitimately avoid payment of the sales tax on certain specific commodities and on resale of laboratory items.

• • •

4. In these days of rapid changes in industry, what are some of the sound purchasing policies for the institutional purchasing agent to adopt and how far should he go in placing orders in advance on the rising market?

There are certain fundamental buying policies that remain sound regardless of outside conditions.



These rules have proved invaluable in times of prosperity and depression alike. These are not enumerated in order of importance, for the reason that each is of equal importance.

(a) The policy of refraining from purchasing anything unless it is needed, regardless of ridiculously low prices for which it is offered, is sound. Low prices do not justify purchases unless the article is actually in demand.

(b) The policy of purchasing from reliable sources of supply is one of the proofs of a well-operated Purchasing Department. By so doing, satisfaction is assured, adjustments and claims are recognized, timely purchasing information is forthcoming, service is improved, advantageous contracts are made possible, disappointments are minimized, and, in the end, money is saved.

(c) The policy of purchasing on a conservative basis before price increase but not that of permitting oneself to be stampeded into over-buying, should be adhered to. Recent glaring examples of ill-advised buying in cotton textiles and furniture show how the objectives of the NIRA are hampered, rather than helped. There is nothing to indicate that prices of competitive products will be controlled by government regulation in the near future. The purchasing agent might better save the cash outlay and by careful analysis and more comprehensive knowledge of sources of supply improve his buying. To purchase what one requires and can pay for, is all that the NIRA demands.

(d) The policy of making contracts with reliable sources providing against price increases and deriving benefits from any further price decline, may still

be possible in some instances. If so, such contracts are bound to be of advantage to the institution.

(e) The policy of buying from the manufacturer or his direct representative is vital in effecting savings for institutions. The purchasing agent is definitely obliged to familiarize himself with these direct sources of supply.

(f) The policy of cooperating with the faculty and department heads in order to buy the appropriate quantity of the correct article for the specific need, is the only successful basis of operation. This marks the difference between an "order department" and a Purchasing Department. To purchase effectively, the purchasing agent must enjoy the confidence of the faculty and department heads. The departments are frequently better informed as to what is needed for their specific requirements, especially in research departments, than the purchasing agent can ever expect to be. To substitute without reference to the department is fatal to a purchasing office. The purchasing agent who knows what he

is about, will work with the faculty and will present alternatives based on studies, resourcefulness and on up-to-date information gleaned from intelligent sales executives. It does not require intelligence to go through the motions of placing orders. The yardstick for measuring the efficiency of a purchasing office is the extent to which it successfully works with the other departments and the faculty and thereby makes decisions of common benefit. I have yet to find the faculty of an institution that will not meet the purchasing agent more than half way in the interests of more effective purchasing.

(g) The policy of maintaining simple, but accurate, information as to kinds of commodities purchased, with quantities, prices, and sources shown, is without argument a vital asset to a purchasing agent. Such a record is built up as purchases are made and it takes practically no effort to accumulate this history of transactions. Its most valuable single phase is that of making it possible to combine orders of the several departments intelligently, thus establishing

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*Investment in college buildings and equipment is enormous, and the purchasing agent's responsibility is equally large.*





# TRADE MARKS PROTECT *the* PURCHASING AGENT

by

WALDON FAWCETT, *Washington Correspondent*

OF all the federal government's self-imposed censorial tasks, one stands out, even above the NRA supervision, as a growing responsibility. Probably it is simply because the United States department of commerce had already assumed the role of mentor of the vocabulary of commodity specification that it was deemed unnecessary to deal with this phase of regulation in the Codes of Fair Competition. At any rate, here is an adventure in Federal Paternalism that, as it mounts in volume, gathers complexity. And it has, moreover, a little-suspected intimacy with practical considerations of industrial purchasing.

How is it that Uncle Sam has jurisdiction over the language of industrial and commercial designation? Surely it is confusing and contradictory that, at the very juncture when, by abridgement at the National Bureau of Standards, the government is withdrawing from dictation of "commercial standards," etc., it should be increasing its hold upon the words, names, phrases, alphabetical and numerical indicia that serve for buyers the purposes of identification. Furthermore, let us be clear on the point that federal trusteeship of technical terms has nothing whatever in common with the government's latter-day activities in furtherance of standard specifications.

The answer to the question of how and why official Washington has taken unto itself the largest stake in the conservation of the dictionary of specification is to be found in the purpose and workings of the United States system of trade mark registration. As our

TRADE MARKS are of prime importance to the manufacturer. They are, likewise, of equal importance to the purchasing agent. Close or unfair similarity of trade names could conceivably cost either of them a great deal of money. In the case of the purchasing agent the trade mark is the "handle" by which he knows and purchases his materials. It is a protection to him as well as the manufacturer.

THE GOVERNMENT of the United States has taken upon itself the tremendous task of regulating the use of trade marks. And it is the protection of the whole vast army of buyers that is sought by its official censor, the United States Patent Office, when it turns thumbs down on the application of a manufacturer.

TWENTY-FIVE years as a correspondent in the national capital have given Waldon Fawcett an unusual insight into the workings of Official Washington. No purchasing agent should miss this enlightening discussion of the whys and wherefores of trade marks as handled by Uncle Sam's Watch Dog of the Public Weal—the Patent Office.

readers know, one of the functions of the United States patent office consists in the certification (as to date and duration of use) of brands, names, devices and designs eligible as trade marks. In the case of other classes of "industrial property"—tags and labels, for example—Uncle Sam, in his role of entry clerk, does not assume too much responsibility. The enrolling officials at the patent office accept offerings, one might say, on a no-questions-asked basis, simply making note, as a matter of record, of the claims to origin and ownership made by the entrants. With

trade marks, however, the situation is somewhat different.

In effect, federal registration of a trade mark gives notice of tacit governmental support for the trade mark owner's claim to exclusive possession. Therefore, as is becoming in a bestowal of monopoly, the officials in charge of the trade mark clearing house at the department of commerce make consistent effort to vise all candidates on two counts.

First, a "search" of the files is conducted to make sure that a newly-proffered mark does not conflict with or encroach upon an older mark already granted another trader. Secondly, the official guardians of the Trade Mark Register scrutinize each applicant to make sure that it does not transgress any of the prohibitions which federal law has laid upon trade mark form and expression.

It is in connection with this second appraisal, particularly, that the machinery of trade mark registration has developed into a sifting or selective utility withholding from private ownership the mediums of specification that are the common heritage of this and future generations of purchasing agents. The trade mark statutes enacted by Congress, notably the basic Act of 1905, do not go into extended detail as to what a trade mark shall be. But the bill of rights is specific as to what a registrable trade mark may not be.

Several of the taboos affect the buyers' freedom of speech in indicating his wants. Thus, geographical names are withheld from private appropriation. The denial of registration to "deceptive" words tends also to clarification in pur-

chase. But the crux of control is to be found in the ban on words or combinations of words that are "merely descriptive."

Just here, if you please, is the warrant for the assumption by the executive branch of the government (backed by the United States Courts) of the police job in behalf of unrestricted description in specification. To turn down advertising boasts, and the adjectives and nouns that are meaningful instead of fanciful, might, at first glance, appear to be simple, administrative routine. In reality it has proved one of the most difficult obligations put upon patent office examiners. There has been need for infinite, hair-splitting differentiation between delicate shades of meaning. Always with a fine regard for the rights of the whole body of purchasers as against the privilege due a particular seller.

The scope of "description" in commodity specification is what has made the perennial issue of analysis of language of specification. The highest federal courts, by way of advising the directorate at the patent office, have ruled that, whereas a veto must be applied to every term that is downright descriptive of the character, composition or quality of goods, there is no objection to the acceptance as trade marks of words or combinations of words that are "merely suggestive."

To draw the distinction between the descriptive and the suggestive may present difficulties at any time. But it adds immeasurably to the hardships that, in the forward march of industry, the terms which are today only remotely suggestive may tomorrow develop into the common currency of description and specification. The net result has been to require of the examiners at the trade mark division a more or less intimate knowledge of the language of specification in all industrial lines.

Two circumstances have added their weight to the pressure for protection of the dictionaries of

purchase. One is found in growth of the habit of branding merchandise, with consequent multiplication of the number of branders and a proportionate scramble, far as well as near, to take possession of everything that may be made to serve as a distinctive "handle" for goods. The other factor arises from the universal American propensity to coin or invent words, to evolve eloquent slang, and to concoct arbitrary abbreviations for lengthy terms. All these shortcuts in the language of specification speedily become potential trade marks. To determine whether classification shall be as "descriptive" or "suggestive" is a task for the most astute Solomon at the patent office.

Only by peeps at specific representative cases is it possible, at this stage in the evolution of the practice, to gain an idea of the underlying principles and the varying minor considerations which determine which words and syllables are forever reserved to the broad uses of specification writing. Fortunately for the enlightenment of purchasing agents, test cases which point the way—border line instances in the twilight zone of legal interpretation—have been numerous of late. Take, as the nearest case in point, the recent experience of a Cleveland company, which illustrates the working of the official mind.

The Ohio manufacturer aspired to fence off, as its trade mark for ceramic and cast iron conduits, the hyphenation "Loc Lip" accompanied by a representation of a cross-section of a joint formed by locking the projecting lips from the respective edges of the conduit or parts to be locked by a longitudinally inserted strip. The term was rejected as being merely descriptive of the goods or the construction of the goods.

And here, behold, an exemplification of how the tribunals at the patent office go to first sources for light upon the construction which the trade places upon any term in

use in trade circles. There are occasions when the official gauge of descriptiveness in a trade term is the meaning which the lay public—the whole body of everyday consumers—would impute to the expression. More often, however, it is the significance within a trade which serves as the measuring stick.

Thus in the "Loc Lip" episode, the officials made it their business to study the advertising literature of the conduit trade. It was discovered that terms such as "Side Joint" are of frequent occurrence in this literature, to indicate character of construction, and that it is, indeed, approved practice to visualize to the purchaser the nature of the design or construction of the standard unit. Accordingly the commissioner of patents ruled that "Loc Lip" was not for the sole use of any one firm since the notation holds the specific meaning that the joint is formed by locking the lips.

This is by no means the only instance in which catalogues and trade circulars, price lists, and other printed matter have been subpoenaed as silent witnesses at the United States patent office to demonstrate when descriptiveness is present in technical terms. In a controversy over trade marks between two well-known tire manufacturers the issue turned on the disclosure in trade literature whether or not the representation of an arrow was used as a functional sign in the tire trade.

Likewise, did catalogues settle a mooted question in the legal duel between the Dennison Manufacturing Co. and the Denny Tag Co. The catalogues of some half dozen firms in the tag trade were mustered to prove that it was common practice in the line to use alphabetical letters for purposes of grading, rating or classification rather than as signs of particular production.

That federal authority is, if anything, stiffening rather than relax-

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# About This New Deal Leisure

**P**ROPER use of the new leisure time everybody is supposed to get under the NRA has been the source of no end of worry for a number of our prominent citizens. John W. Davis looks upon it as the chiefest fly in the recovery ointment, and in taking such a view elicits the following from George M. Carleton, columnist in the *Cleveland News*:

**J**OHN W. DAVIS, sometimes candidate for the presidency, accepts the NRA prospect with at least one misgiving. He fears that the average person, deprived of an opportunity to put in eight of his waking hours at work, will be baffled by the expanded leisure.

The *Chicago Daily News* is inclined to agree editorially, saying "the reduction of the workday below the eight hours is accepted by the business world as a lesser evil, rather than a greater good."

Well, we can't go along even part way with a theory which holds that an hour or so more leisure per day, for any man who has been working eight hours, will baffle him much, hurt him or that particular section of society in which he lives.

We modestly accept ourself as average. We have had jobs which involved anywhere from practically no hours work to 10 or 12 hours work per day. We have always found it much more difficult to translate hours of leisure into hours of labor than to reverse the process. In fact the latter has invariably proved a comparative cinch.

Why, we remember once when unbelievably favorable circumstances permitted us to put aside our tools entirely for eight months (not hours) at a stretch and spend that period of leisure in France. We were not baffled for an instant. We simply went to France and had

a good time for eight months. Except on an occasional morning, we were not conscious of being the slightest problem to ourself or society.

On the other hand, when we went back to work after those eight months we were sometimes as much of a problem as we and our employer could conveniently handle.

So we are not alarmed at the prospect of an hour or so more leisure in the average man's day. If he has been given to misspending the leisure he has had under the Old Deal, he may as well be provided with enough to go out in a blaze of glory and make room for those who know how to spend it.

A visit to the public library, to our parks on a Saturday afternoon or Sunday, is pretty good evidence that there are plenty of the latter.

Our chief concern, in connection with the NRA, is the fear that it will NOT provide any substantial addition to the leisure hours of the average man. Even the blue eagle emblem, with a cog-wheel in one hand and a packet of lightning in the other, seems to breathe hard work and more of it.

If we had done the choosing, the bird would have had a tennis racket in one and a mint julep in t'other.

## Aroused Lawyer

Gen. Hugh S. Johnson, National Recovery Administrator, has received a telegram from a western lawyer informing him that clients are seeking advice as to methods they can employ to circumvent the provisions of the National Industrial Recovery Act.

The giving of such advice by attorneys in times like the present

should be condemned, the lawyer adds. He makes the suggestion that if lawyers were requested to draft a code having for its main feature a pledge to refrain from giving advice as to how to defeat the NRA such a request would be met by a patriotic response from the legal profession.

"Would further suggest," the telegram continues, "that attorneys report to the Administration all persons requesting such advice. While this is contrary to the present accepted code of legal ethics, I believe that the present emergency justifies this exception. This is one way the profession may serve."

## Cobs Cooperate

Distinctively American as Uncle Sam's goatee, native as the Bowie knife or the lightning rod, the corn cob pipe has taken its place among NRA's Americana collection.

Muse of the crossroads philosopher, the pipe produced by old mother nature has gained in popularity until, by cracky, it has to have a code. Cracker-barrel cronies, in the ruddy glow of the old egg stove at the general store, simply can't do without it. So, unlike the horse collar and the buggy whip, the corn cob is on the up and up.

With just pride the makers of the golden bowl have banded together into an association known as the "Manufacturers of Corn Cob Pipe Trade Group" and have presented a code of fair competition for General Johnson to scan.

So that its makers may have more time to smoke it, they say in the code they won't work more than 40 hours a week. Male employees are to get a minimum of 25 cents an hour and women 20 cents.

# TRADE MARKS

*Continued from page 14*

ing its vigilance to preserve to trade and industry the free play of the utmost vocabulary of specification and purchase, has not been better exemplified than by the recent resistance to a roofing manufacturer.

The firm in question was loath to take "no" for an answer when it sought registration at Washington for the compound "Ever-Fast" as a trade mark for roofing consisting of a fabric or fibrous base treated with waterproofing material. The name censors rejected it on dual grounds. Either "Ever-Fast," in this connection, refers to the characteristic that the roofing when laid in place does not have a tendency to warp which would render it insecure against wind and rain. Or else, the term "Ever-Fast" denotes that the color of the roofing is permanent.

Mindful of the formula which assays a would-be trade mark in terms of its current usage in the trades directly affected, the representative of the company argued eloquently before the commissioner of patents that "Ever-Fast" is not essential to free and easy specification for roofing at large. He insisted that the roofing trade does not ordinarily refer to roofing material as being "fast" nor does it employ the term "fast" with reference to color, in the sense that it is employed in the textile trade.

Arbiters at the patent office remained adamant, pointing out numerous instances in which they have denied admission to common English words ordinarily applied descriptively to goods. Thus, "Ever-Ready" has been denied use on coffee mills and "Everlasting" on vehicle wheels.

That misspelling does not afford an alibi for descriptiveness, is indicated by the disapproval of "Kant-Slip" for autographic registers and "Klingtite" for packing. Not forgetting the exclusion from the

Register of "Resis-tacid," "Stabrite" and "Dyanshine."

On the judicial side, a development of the past few years has buttressed effectively the disposition of the executive branch of the government to lean backward in protecting the technical and generic terms which are, or may be needed by purchasers to make known their wants.

Always the first determination of the status of a term suspected of descriptive intent rests with the tribunals at the United States patent office. In the vast majority of cases the decision at the department of commerce is final. But a disappointed nicknamer may, if he elects, make appeal to an authority higher up. Sitting above the patent office as a reviewing authority is an Appeals bench, the decisions of which, in effect, dictate or prescribe the policies of the patent office.

Within the recent past, Congress has provided a new supercensor known as the United States Court of Customs and Patent Appeals. This has become the higher up authority on all questions of principle involving the withdrawal from the public domain of terms of specification. Consequently it bulks large in the picture that this new court has revealed itself as a staunch defender of the common language of specification.

Not only is the Appeals court backing up the executive branch in its traditional policy of denial of monopolies on descriptive and technical terms but, if anything, it has gone farther in application of a policy of non-segregation for standard designations. In this last lies the explanation of why near-descriptive names are rejected today despite the fact that equivalents in insinuation were admitted some years ago.

The new pace of protection was set by the Appeals court in disposing recently of the term "Copper-

weld." Here was an ideal vehicle for test purposes, because "Copperweld" exemplifies a technique that has become increasingly popular of late among branders. The technique which employs word coinage, "melting" or corruption of standard forms to dodge the taint of barefaced description.

Ever since it was ruled, years back, that "Citrofume" had no common meaning, no meaning whatever, until applied to a given chemical product, this detour has been employed for terms reminiscent of commodity ingredients, or process of manufacture. Relying upon this escape, the creators of "Copperweld" went before the Appeals bench insisting that their technical term was not to be accounted descriptive because it did not call up an immediate mental picture of the goods or the method of fabrication.

Standing staunchly for the cause of freedom in specification the court of appeals indicated its deepening prejudice against descriptive terms as private property, regardless of whether the notation visualizes a physical product or proclaims a given process of manufacture. More than that, the ultimatum of the court indicates that henceforth trade mark sanctuary is not open to a coined or invented word if its component parts are words in common usage as tools of specification.

Running two or more words together, no more than misspelling, will disguise, for admission to trade mark registration, terms that are popularly or promiscuously used in designation or description of goods.

Since it will, in many instances, rest with purchasing agents and similarly-placed executives to guard their rights by protesting the capture of terms that belong in the common language of business, it becomes of prime importance to ascertain where runs the boundary

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# ALLOYS . . .

## STEEL'S RENAISSANCE

by

C. A. ILGENFRITZ, *Director of Purchases*  
*Republic Steel Corporation*



**A**T first thought it might seem that the purchasing director of a steel corporation would have little occasion to buy steel at any time, and his views on the subject would therefore be purely academic. True it is that we don't buy much steel in this department, but long and direct association with an aggressive steel sales force and constant attendance at meetings where sales problems are discussed in the most intimate manner, have given me an insight into what our salesmen think the steel buyer should know and do, which may be interesting to those buyers who have not had similar opportunities.

There are of course general policies which apply to the purchase of steel as well as other products. The basic consideration of the supplier's reliability is not so important if direct mill purchases are involved. Steelmaking requires doing business on a scale that guarantees reliability. The same holds true for another basic consideration—the financial responsibility of the supplier.

Where steel products are purchased from jobbers' stocks these factors assume greater importance, yet the established jobber of iron and steel products usually has very high commercial standing. There are, to be sure, some gentlemen of doubtful virtue in this business, as in others, but they are few in number and the buyer dealing with them will be well aware of the situation.

There is a rather definite feeling among steel salesmen that many buyers do nothing to encourage

the supplier's interest in their particular requirements. We consider this an important and necessary part of any happy relation between steelmaker and user. Not so many years ago steel was a commodity, produced in many forms

**LIKE COTTON**, coal and codfish, steel was once a simple commodity. Its ingredients were standardized, its physical characteristics known and tabulated and its performance under given conditions a matter of record. Steel was steel and all design was obliged to conform to its known qualities.

**THEN CAME** the automobile. Motordom lost little time in demanding special steels; steels that would do certain definite jobs. They spread out their blueprints and announced, "This is what it must do. Give us something that will do it." Thus was the birth of modern alloy steel.

**STEEL TODAY** is literally tailor-made. Its varieties are limited only by its applications. New developments are appearing constantly. Keep your eye on this fast-moving industry, for the steel you are using today may be outmoded six months from now.

it is true, but a commodity nevertheless, with pretty well defined properties. Today this picture has changed greatly. Improvement in steelmaking practice, the development of a wide range of finishes and physical properties, the whole broad development of the alloy steels and irons, offer the steel buyer a wide and sometimes confusing latitude for his choice.

The steel salesman of today also is a changed individual. Usually he

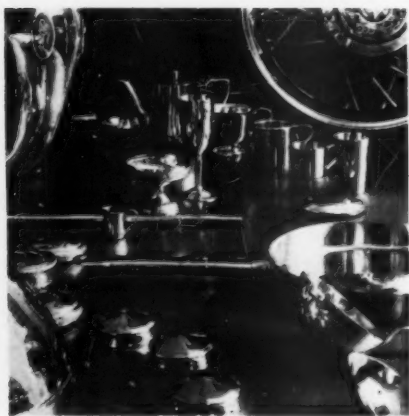
is carefully trained and equipped with both technical and practical experience. He is able, if given the opportunity, to study, analyze and prescribe for your peculiar needs. The instances in which our own salesmen have been able to save money, cut production costs or improve product quality for our customers would fill a huge volume. Our sales and operating departments insist on as complete information as possible in regard to the use to which any customer proposes to put the steel he buys, and, in the case of many products, decline to execute the order until the information is forthcoming.

The average buyer has nothing to lose and everything to gain by taking the experienced steel salesman into his confidence and in fact inviting all the cooperation the salesman is equipped to offer. Once a satisfactory grade of steel is secured for any particular requirement, I should like to point out the danger of the buyer closing his mind to any further consideration of that problem. Changes and improvements in the steel industry are progressing very rapidly. A vast amount of research into new and improved materials is going on constantly and new developments are occurring at relatively short intervals. The best material today may not be the best for



your purpose six months from now. Keep an open door and an open mind to all reliable sources that may have something of value to offer you.

In steel, as in anything else, the lowest price is not always the best bargain. It is unnecessary to labor



the point, but there is probably no product, to speak very generally, in which quality and uniformity, or the lack of them, are so difficult to determine by observation.

The buyer, in deciding upon his mill sources of supply, must consider and weigh many factors. First and most obvious are the relative advantages in location of the several mills equipped to serve you. Transportation will be the governing factor if all other things are equal.

Second is the service rendered by each individual mill. The word "service" includes more than consistent delivery of the required quantity and proper quality of steel when promised. It includes the willingness of the mill to stretch a point in helping you meet the emergencies which arise in the best regulated organizations. It includes immediate help in your production troubles involving the handling of steel. It includes, in short, all those supplementary services which are not in the letter of the contract but which must be called upon from time to time if everything is to run smoothly. While no mill operating department seeks such opportunities because of their influence on costs, the mill that is hide-bound in its observance of schedules as set up can not render

the broadest possible service.

The third consideration is the degree of interest each mill takes in your problems. You can determine this quickly by inviting help and suggestions.

Fourth is the technical advice each mill is prepared to give. Problems are bound to arise which are beyond the scope of the salesman, no matter how well trained. They require technical advice of the most expert nature. Determine to your own satisfaction just what the technical backgrounds of your prospective sources are, what they have contributed and are contributing to the technical advances of the steel industry, what their facilities are for research and what research programs they have under way. Companies with broad development programs will have an abundance of technical talent immediately available.

Fifth—study the advantages of confining your purchases to the source offering the widest range of products too meet your requirements. From such a mill you will get unbiased advice on your problems.

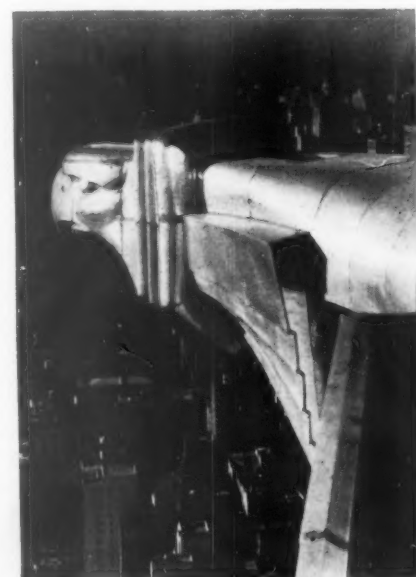
Sixth—consider the advantages in buying from a mill whose name and whose advertising add character to your products. Relatively few steelmakers have done enough in the way of moulding opinion and building reputation which reflects credit on their customers and their customers' products, but the trend in this direction is unmistakable, under the leadership of the few.

Such are the chief points to consider when selecting sources of supply. So many of the points outlined apply to warehouse sources as well as mill sources that it probably is unnecessary to elaborate on warehouse sources as such. Several general points, such as concentration of warehouse purchases to obtain quantity discounts, are familiar to every steel buyer. One consideration, however, is worthy of note. Your alert warehouse salesman may not have the highly specialized knowledge of the mill

salesman, but his field of knowledge covers the entire steel industry and he is sometimes very valuable in supplying information on the range of steel products available.

Study steel. It is neither a raw material nor a finished product, hence production processes used in the mills have an important bearing on your manufacturing and fabricating costs and methods. Any buyer of steel who has not already done so will derive substantial benefits from visiting his sources of supply, seeing the various types of material produced and learning at first hand what steps are taken in the mills to assure proper performance of the steel in the customer's plant. Such a trip may also shake your conviction that you are using the one right kind of steel for your purpose and may open the way to some development work which will be very profitable to you in the end.

In your study of the steel industry, follow the development and



installation of new equipment by the various mills. As mentioned before, new developments are breaking fast in the steel business. New and better finishes on sheets, for example, are frequent occurrences. The installation of new equipment probably means that the mill making the change will be equipped to furnish something it

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# THE IMPORTANCE of SALE CONTRACTS

by

LEO T. PARKER, Attorney at Law

THERE are several legal classifications of contracts, but sale contracts always are bilateral agreements.

In other words, in unilateral contracts there is *never* mutuality of obligation, but in bilateral agreements each party agrees to perform one or more definite acts.

Generally speaking, a sale contract is enforceable if all of the following questions may be answered in the affirmative:

- (1) Did the seller submit an offer which the buyer unconditionally accepted?
- (2) Were both parties of legal age, of sound mind and did they have authority to enter into the contract?
- (3) Was the object of the contract lawful?
- (4) Did both parties agree absolutely to perform a definite act or thing?
- (5) Were the obligations mutual?
- (6) Did both parties make truthful statements with respect to the subject of the sale?
- (7) Were the obligations clear and not ambiguous?

## Oral and Written Contracts

Usually, an oral contract is equally as effective and enforceable as a written one and both kinds of contracts are governed by practically the same rules of the law. The important difference between a written and an oral contract is that the complaining party must prove the contents of an oral contract, whereas the Courts construe a written contract *strictly* in accordance with the in-

tended meaning of the written words. Moreover, verbal promises or agreements have absolutely no effect to vary the meaning of a written contract, unless it is shown that such verbal promises were made to *fraudulently* induce

YOU ARE a purchasing agent. A salesman comes into your office and sells you a carload of—say—paperweights. (Your firm intends to send these paperweights to customers for Christmas cards.) The order specifies that your firm's name and address be imprinted on each article. Salesman requires money deposit with order and you give him check. Order and check are mailed immediately to manufacturer, but manufacturer fails to acknowledge order. You wait ten days, then cancel the order and demand return of deposit. Manufacturer refuses and you sue.

WHERE DO you stand? Have you got a case? Can you collect the deposit? Can you collect damages?

READ THIS timely and interesting article by Mr. Parker. His experience covers a wide range of legal problems. He gives you the answer to this one and many others in forceful, yet plain, understandable, non-legal English.

the other party to enter into the contract.

## Effect of Fraud

As a matter of fact, many litigations have been instituted by persons who do not know that the Courts will not permit the introduction of verbal testimony to vary the meaning of a valid written contract. These persons in-

variably lose the suit. The only circumstances under which verbal testimony may be introduced to relieve a party from the obligations of fulfilling a written contract or guarantee is to prove fraud, unavoidable mistake, and the like, or to explain the meaning of ambiguous or uncertain parts of the agreement. (285 S. W. 558)

An example of this important phase of the law of contracts is found in the very recent case of *Eastern Co. V Shapiro*, 161 N. E. 240. The facts of this case are that a buyer and a seller entered into a contract. The salesman verbally promised the buyer that his employer would not compel the former to fulfill the terms of the contract.

Later when the buyer attempted to rescind the contract, relying upon the salesman's verbal promise, the Court held him liable and explained that testimony pertaining to verbal promises made by the salesman was not admissible to vary the terms of the written agreement.

## Written Contract Stands

Also, the Courts have consistently held that neither party may change the clearly apparent meaning of a written contract by reference to oral or verbal agreements.

For instance, in *Voight V Blanton Co.*, 46 S. W. (2d) 927, a written contract was signed by a buyer and a seller. Later one of the contracting parties attempted to change the meaning of the contract by introducing testimony that the other party had made verbal agree-

ments which contradicted written provisions.

However, the Court refused to vary the apparent written meaning of the contract, saying:

"Plaintiff (purchaser) relies on certain oral statements, which the evidence tends to prove were made by defendant's sales manager some time after the contract was entered into . . . . However, such statements, if they were made, are of no avail. It is elementary law that oral declarations are not allowed to contradict or vary the plain and unambiguous terms of a written contract."

Another point of the law is that a purchaser may prove *fraudulent* statements of a salesman of merchandise, although a printed statement on the contract form warns the purchaser that the seller will not be responsible for verbal statements or promises made by the representative.

For example, in *J. I. Co. V Bird*, 11 P. (2d) 966, a contract form used by a salesman contained a printed clause as follows: "No salesman . . . . has any authority to waive, alter or enlarge the contract or to make any new or substituted or different contract, representations or warranties, and salesmen . . . . are not authorized to bind the company by any act, contract or statement."

In later litigation a seller argued that on account of the above mentioned clause in the contract he was not responsible for statements of his salesman. However, the Court held the seller bound by any fraudulent statements made by his salesman, saying:

"We think that the effect of this stipulation . . . . is *unenforceable* because against public policy, that the fraud complained of vitiates the entire transaction and that the introduction of parol testimony of the fraudulent representations was admissible."

#### Authority of Employees

It is important to know that a seller always is responsible for the acts which its representative com-

mits within the scope of the employment. Moreover, a general authority to transact business may be conferred purposely or unintentionally on a representative, under which circumstances the firm is liable for contracts given to purchasers.

However, the liability of a seller for the contracts made by its agent cannot be determined merely by the authority which the representative *says he possesses*. This is true because controversies of this nature are determined by the Courts only after a very thorough investigation of how the purchaser became informed of the agent's authority to represent the seller in the particular transaction.

Frequently, one party to a written contract makes certain verbal statements which are directly contradictory and supposed to be authorized by his employer. Later when litigation arises, the complaining party may attempt to defend his case by introducing testimony pertaining to these verbal statements. However, the Courts have repeatedly held that where verbal statements *merely contradict the written statements*, evidence of these oral statements will not be admitted, and the litigation shall be decided strictly in accordance with the legal construction of the written parts of the contract.

#### Court Presumes Honesty of Seller

The law always presumes every person to be honest and trustworthy until proven to the contrary. Very often the character of merchandise is such that a purchaser is compelled to rely upon the honesty of the manufacturer to supply the proper goods. Under these circumstances, the Courts imply a warranty on the part of the seller that he will supply merchandise reasonably fit in consideration of the price paid. Also, the Courts presume that both buyer and seller fully intended, when the contract was made, to fulfill the various obligations, but any proof is admissible which tends to disprove this

presumption or unlawfulness of the contract.

One very important rule is that a seller who enters another state for the purpose of transacting *intrastate* business therein is subject to the laws of that particular state. Yet it is well to know that if the transacted business is *interstate* the seller cannot be required to abide by the laws of the foreign state.

Therefore, if a seller transacts *intrastate* business, and fails to comply with the laws of the state in which the merchandise is shipped, he may be deprived from filing suit to collect the amount due from the purchaser. Other Courts have held that where interstate business is not affected by the transaction, a state may require foreign business firms to perform certain acts upon such terms as may be prescribed by the Legislature of such state. Where it is shown that foreign corporations or other sellers have not complied with such state laws their sale contracts are illegal, invalid and unenforceable.

For illustration, in *Midland Co. V Warren*, 46 F. (2d) 870, it was disclosed that a Tennessee law which provides that it is unlawful for a corporation organized under the laws of a foreign state to carry on or do business in Tennessee without filing a copy of its charter in the office of the secretary of state, and thus becoming in effect a domestic corporation in Tennessee.

A company in Tennessee purchased merchandise from a seller located in Minnesota. Later the purchaser refused to pay the purchase price, and the seller filed suit. The purchaser contended that the Minnesota corporation could *not* file the suit because it had failed to comply with the above mentioned Tennessee law.

The higher Court held the Minnesota corporation *not* entitled to prosecute the suit, and said:

"Since at the time plaintiff (seller) made the contract upon

which this suit is based it was doing business in the state of Tennessee, within the meaning of the state statutes, which business was an intrastate business, and since plaintiff (seller) had not complied with the Tennessee statutes authorizing it to do business in Tennessee, this suit cannot be maintained."

#### Law of Guarantees

Frequently, litigations between buyers and sellers hinge on the legality of guarantees. Generally speaking, the difference between an express contract and an implied contract is that in the former the parties agree on their obligations, whereas an implied contract is a result of the peculiar relation of the parties. In other words, the Courts may imply an obligation, although neither party has expressly agreed to perform a definite act.

It is important to know that no particular form or arrangement of words is necessary to constitute a valid express guarantee. Any positive assertion regarding the quality of a product is sufficient to make the manufacturer liable, provided the statements are made by a person having proper authority to bind the seller and the statements are relied upon by the buyer.

For instance, in a quite recently decided leading case the Court said:

"It has been rightfully held and has been uniformly adopted law that a statement made at the time of a sale is a warranty, provided it appears on the evidence to have been so intended by both the buyer and the seller and the buyer *relied* upon such statement."

Consequently, in view of this established law, a seller may make any absurd and unreasonable guarantee for which he is responsible if the buyer relies on the guarantee. However, the seller positively is *not* bound by the warranty if the buyer is well versed and *knows* that the statements are not true.

Also, a guarantee given *after* the contract of sale is made is not effective, because such a guarantee is not based upon valid consideration.

#### Status of Silence

Still another important point of the law is that a seller may be liable on a guarantee simply because he remains silent when in fact he rightfully should speak up and explain certain things regarding the merchandise.

For example, in a very recent leading case (134 Atl. 62), a higher Court in holding a seller bound by an implied guarantee, where it was proved that the buyer was deceived by failure of the seller to impart information of known defects in a machine, said:

"A seller of merchandise may not do anything to conceal from the buyer a material fact affecting it, or say or do anything to divert or forestall an intended inquiry by him, or deliberately hide defects, for in so doing he is not merely remaining silent, but is taking active steps to mislead. So the surrounding circumstances may be such that the effect of his silence is actually to produce a false impression in the mind of the vendee (buyer), and the making of an agreement, or doing of some other act, may in itself lead the buyer to believe that a certain fact exists and so amount to an affirmation of it. So the seller may stand in such relationship of trust and confidence to the buyer that it is his duty to make a full disclosure."

However, this rule of the law never is applicable, unless it is proved to the satisfaction of the Court that silence on the part of the seller or his agent actually induced the purchaser to make the contract and, further, that the latter was deceived by the seller's silence.

Generally, an implied warranty is valid if the buyer relied upon the manufacturer's *good judgment* to furnish something which would fulfill the special purpose.

A very recent higher Court case

(140 S. E. 653), explained the law on this subject, as follows:

"When one contracts to supply an article in which he deals, to be applied to a particular purpose, so that the buyer necessarily trusts to the judgment or skill of the vendor, there is an implied warranty that it shall be reasonably fit for the purpose to which it is to be applied, and the better doctrine is that this rule applied to dealers as well as to manufacturers, and not to manufacturers alone."

#### Importance of Payment

Of course, a manufacturer is bound by the terms of a written express guarantee, providing the purchaser carefully fulfills his part of the contract. In other words, although a manufacturer guarantees merchandise against defects, he is relieved from liability on the guarantee if, for instance, the purchaser fails to make payments promptly in accordance with the agreement, or otherwise breaches the contract.

On the other hand, a purchaser is bound to report promptly any discovered defects. Moreover, he may be barred from legal satisfaction by failure to inspect the goods within a reasonable period, although the contract does not specify the duration of the express guarantee against defective material or workmanship.

Generally speaking, a seller is not bound by a guarantee, if the purchaser fails to notify the former within a *reasonable* period after receiving the defective goods.

Just what is meant by the term "reasonable period" depends upon the circumstances of each case. In one litigation it was held that a purchaser who negligently waited for four months before diligently making tests and discovering the defects, was forever barred against legal action to compel the seller to fulfill an implied guarantee.

However, in another case, the Court held that a delay of three months was not unreasonable in

*Continued on page 32*



# News from the Associations



One of the most energetic Association presidents in the country is J. M. Kiddie, head of the Columbus, O., Association. This group now is conducting a highly successful membership drive and in spite of the critical times, is showing a gain in membership.

The Association's annual meeting was held June 19, at which time Mr. Kiddie, who is purchasing agent of the Columbus Railway, Power & Light Co., was elected president. Other officers are:

Vice Pres., O. G. Sandbo  
Kroger Grocery & Baking Co.  
Secy., Ralph N. Betts  
American Educational Press, Inc.  
Treas., Ray M. DeWolf  
Hughes-Peters Electrical Corp.  
National Director, Richard Evans  
Columbus Coated Fabrics Co.

In line with its aggressive and timely policies, the Columbus Association is running a series of commodity charts for its members, showing trends in commodities of particular interest to the membership and patterned after the nationally known charts of W. F. Campbell, purchasing agent of the Frigidaire Corporation, Dayton, O.



Introducing Elmer H. Hupp, newly-elected chief of the Grand Rapids (Mich.) Purchasing Agents Association. Mr. Hupp is the purchasing agent of the Gunn Furniture Company, Grand Rapids.

At the recent annual meeting of the Association the following officers were reelected:

Pres., E. H. Hupp  
Gunn Furniture Co.  
Vice Pres., Frank Clay  
Imperial Furniture Co.  
Treas., N. A. Cairns  
American Excelsior Co.  
Secy., Hubert F. Knappe  
Knappe & Vogt Manufacturing Co.

The August golf tournament was a complete success. Some creditably low scores were registered, along with some remarkably high ones. The Association now is planning an autumn meeting and get-together party, at which time the yearly program will be mapped out.

The Grand Rapids group meets bi-weekly at the Rowe hotel.



Under the direction of President L. A. Bennett, of the Mutual Coal Company, Salt Lake City, the Utah Association of Purchasing Agents is anticipating a highly successful season.

The group meets on the first Thursday of every month in regular session, at which time all business of the month is transacted. It meets again on the second Thursday of the month at the Salt Lake City Chamber of Commerce for a session under the direction of the Educational committee. On the following Thursday the Association takes the afternoon to visit some local or nearby industrial plant.

The Utah Association has an active membership of 28 and an honorary membership of four.

In addition to President Bennett officers of the group include:

National Director, Joseph Parmley  
Utah Fuel Co.  
Vice Pres., Sam Woodhead  
Independent Coal & Coke Co.  
Secy., D. V. Shurtliff  
Spring Canyon Coal Co.  
Treas., H. K. Duckworth  
Salt Lake & Utah Railway Co.

# News from the Associations

## BUFFALO

Motion pictures showing the manufacture of corrugated shipping containers featured the entertaining talk of J. H. MacLeod, principal speaker at the first fall meeting of the Purchasing Association of Buffalo Sept. 13, at Hotel Statler.

The evening's program began with the director's meeting at 5:30. Dinner was served at 6:30, followed by the regular business meeting at 7:30. Richard Johnson, of the Dayid Bell Co., Inc., is secretary and treasurer of the Buffalo Association. Meetings are held at the Statler on the second Wednesday of each month except July and August.

## CONNECTICUT

The September meeting of the Purchasing Agents Association of Connecticut has been scheduled as a Past Presidents' Meeting, to be held Sept. 26 at Bridgeport. All past presidents of the Association have been invited as special guests at that meeting. They are:

W. T. Birney  
J. E. Forgy  
W. P. Ogden  
O. P. Palmer  
C. J. Schnelle  
H. M. Morrison  
F. G. Space  
I. C. Boies  
G. J. Ledwith  
D. W. Williams  
S. B. Ensign  
H. E. Pape  
E. S. Cobb  
C. E. Smith

With the exception of July and August, the Association meets on the fourth Tuesday every month in one of the larger cities of Connecticut. F. A. Neumann, of the New Haven Clock Co., New Haven, is secretary.

## CALIFORNIA

More than 250 delegates are expected to attend the annual meeting of the Purchasing Agents Association of Northern California at Berkeley, Sept. 21.

## TEXAS

Believing that every member should receive from his connection with the Association something which will help him in his work, the Purchasing Agents Association of Ft. Worth will launch a series of educational programs when it starts its regular schedule of meetings this fall. S. J. Johnston, of the Acme Brick Co., Ft. Worth, is secretary of the organization.

## CANADA

After hibernating for the summer the Purchasing Agents Association of Montreal expects to swing into action on a series of interesting meetings this fall. Back from his holiday in Maine, John Eaton, president of the group, was seen recently on St. James street in earnest and animated conference with members Bill MacKay, George Henderson, Edmond Garneau and Reg. Woollatt.

Officers of the Purchasing Agents Association of British Columbia are formulating a program of meetings, preparatory to opening the regular fall schedule in Vancouver. J. M. Reid is secretary.

## PENNSYLVANIA

Starting with its fall meetings in Easton, Pa., the winter sessions in Bethlehem and the spring meetings in Allentown, the Purchasing Agents Association of the Lehigh Valley will open the season officially on Sept. 25 at Allentown. G. L. Baumgartner, Aldrich Pump Co., Allentown, is secretary.

Harry J. Kaufman, of the Narrow Fabric Co., Wyomissing, Pa., has been elected president of the Reading Purchasing Agents Association. Other officers are: C. E. Thompson, Berks Engineering Co., Reading, vice president; C. H. Yoder, Merritt Lumber Yards, treasurer; J. J. Tighe, Glen Gary Shale Brick Co., Wyomissing, secretary, and J. B. Marquette, Parish Pressed Steel Co., Reading, national director.

## Voyage Heroique

Undaunted by and unafraid of reports from the Atlantic Seaboard of 70-mile hurricanes, 600 purchasing agents and cost accountants of the Cleveland associations set sail Aug. 24 with their ladies on the steamer *Goodtime* for a nocturnal cruise on Lake Erie.

The winds blew and the waves piled high, yet all aboard the well-named craft enjoyed themselves to the utmost.

Scheduled contests went by the boards and private feuds were forgotten as old man dignity took the count.

## Appointment

Appointment of Harry A. Schweid, realtor, of 1165 Park Avenue, Rochester, N. Y., as deputy city purchasing agent in charge of real estate, was announced recently by Comptroller Charles S. Owen.

The appointment is made to fill a vacancy that existed for eight months, caused by the resignation of Warren W. Allen, who accepted a position with the Lincoln-Alliance Bank and Trust Company.

Mr. Schweid receives a salary of \$3840.

# Personalities



ONE of the most highly respected and outstanding members of the purchasing profession is Fred L. Wood of the United States Envelope Co., Springfield, Mass.

On Oct. 8 this year Mr. Wood will celebrate his seventy-fourth birthday. He has been actively engaged in the envelope manufacturing industry for 54 consecutive years. When medals are struck for long, useful and loyal service the line will form somewhere to the rear of U. S. Envelope's Fred Wood.

A native New Englander, Mr. Wood at the age of 19 became connected with the Morgan Envelope Co., of Springfield, Feb. 19, 1879. His subsequent activities took him into shipping, production and sales, until in 1898 the Morgan company along with eight other manufacturers became part of the United States Envelope Co.

Mr. Wood was made purchasing agent of the combined organization and as such discovered immediately that he was scheduled for a good deal of pioneering. A purchasing agent was a pretty rare bird back in 1898. There was very little precedent to guide his footsteps, so he undertook to blaze a trail of his own.

He visited merchants and manufacturers in every part of the country from the Atlantic to the Pacific, talked to them, listened to them and made mental notes. After contacting virtually every paper mill in the United States and Canada he went to England to see how it was done in the British Isles.

When Fred Wood took over the purchasing for U. S. Envelope the department consisted of himself and a stenographer. Under his direction the operations of this department were expanded to the point where the activities of the General Purchasing Agent's office today require an assistant purchasing agent, a secretary and two stenographers.

Fred Wood was married in 1881 and with Mrs. Wood celebrated their Golden Wedding anniversary more than two years ago.



IN the career of Donald G. Clark, purchasing agent of the Brown & Sharpe Manufacturing Co., Providence, R. I., lies the unusual story of a young law student who turned his back on the Bar and deliberately became a purchasing agent.

Born in Portland, Maine, Donald Clark passed through the customary elementary and high school routine without accumulating either scars or glory. Acting on his determination to tread one day the halls of legal fame he entered Brown University, graduated, and enrolled himself at Harvard Law School. Completing his course there he became the justly proud possessor of a handsomely engraved diploma and a degree in Law, then cast about him for a suitable spot from which to suspend a brand new shingle.

His eye fell by chance on the Brown & Sharp company and he was not long in realizing that opportunity is not necessarily limited to a knowledge of common and statute law. He became assistant purchasing agent of the company, continuing for five years, until 1920, when he shifted to the sales department. In 1925 Mr. Clark was made purchasing agent, the position he has held ever since.

Donald Clark always has been actively interested in purchasing affairs. He is a past president and national director of the Rhode Island Purchasing Agents Association, also vice president of the New England district for the National Association of Purchasing Agents.

He is chairman of the Executive committee of the National Association, the group under whose supervision Prof. Howard Thompson Lewis's widely read book, "Industrial Purchasing," was published last spring. Also he was one of the prize winners in the contest sponsored by the National Association of Purchasing Agents in conjunction with the National Association of Cost Accountants to determine a yardstick for measuring purchasing efficiency.

Mr. Clark is married and has three children.





**S**OLDIER, lawyer, machinery designer and versatile writer of a wide range of industrial and business articles, Leo T. Parker presents a personality as interesting as it is many-sided.

Mr. Parker has written a particularly timely and illuminating article on "Sale Contracts," especially for purchasing agents. This article appears on Page 19 of this issue of THE EXECUTIVE PURCHASER.

Born Aug. 9, 1892, Leo Parker's first business venture was the automobile accessory manufacturing trade in Cincinnati in 1916. He was 24 years old at the time. Just as he had established himself and secured a firm toe-hold in the industry, the United States entered the war and the adaptable young Mr. Parker promptly slipped himself into an infantry private's uniform.

Soldiering came just as naturally to him as tinkering with gadgets for automobiles and by August, 1917, the private's uniform had been traded in on a neatly tailored one with a gold bar on either shoulder. His superiors had wasted little time in recognizing native ability and Leo Parker's commission arrived just three months from the day he enlisted. Lieutenant Parker served with distinction throughout the war and was mustered out in January, 1919.

On his return to Cincinnati he turned to law and by 1922 had been admitted to practice before the Supreme Court of the State of Ohio. Still interested in machine design he entered the Ohio Mechanics Institute, received his diploma in mechanical drawing in June, 1923. Two years later he was admitted to practice patent and trade mark law before the United States Patent Office in Washington. Six months later that same year, 1925, Mr. Parker was made attorney and counsellor of the United States Circuit Court of Appeals for the Sixth Circuit.

Leo Parker is a frequent and well known contributor to a variety of business and mechanical publications, such as *System*, *Popular Mechanics*, *Machinery*, *American Gas Journal* and *Sales Management*.

THE EXECUTIVE PURCHASER feels extremely fortunate in having him on its contributing staff.

## INSTITUTIONAL BUYING

*Continued from page 12*

definite standards for adoption by all departments and effecting savings by grouping orders. It is frequently found that one department is using some commodity that another department might well adopt in place of that specified. Such a record will prove a most valuable reference guide when considering the placing of standing orders.

• • •

5. Educational institutions and hospitals are granted special discounts for several definite reasons: (a) Because of research accomplishments. (b) Because of civic and state interest. (c) Because of volume business. (d) Because they do not make a profit. (e) Be-

cause they are excellent accounts and pay their bills. Is it possible that the NIRA will prohibit these discounts?

—

It will be some time before "educational discounts" are eliminated or reduced, if at all. The purchasing agent will have to be alert to this possibility and must keep himself informed. If the purchasing agent is not now benefiting by these discounts for his institution, he should be. As his knowledge of correct sources of supply is increased, he will become familiar with the substantial savings that are available, and he will reduce costs for his institution as a result.

• • •

The purchasing agent is thus challenged today to do a better job. His position can be made just as important as that of the comptroller who is trying to balance his budget. The purchasing agent can go a long way in assisting the comptroller in this respect. The results of his efforts will be fully recognized by all the departments of the institution.

The purchasing agent is "on the spot." It is up to him as never before to be wide awake, to study, to work with the faculty, to enlist the cooperation of the departments in utilizing equipment to a greater extent. But, above all, he must be resourceful in these times which put an additional strain on all those who are trying to do more, and have less with which to do it.

•

## Lane Is Named

Leslie E. Lane has accepted the position of assistant manager and purchasing agent for the Bemis Bros. Bag Co. He was formerly associated with the Indian Head Mills of Cordova, Ala.

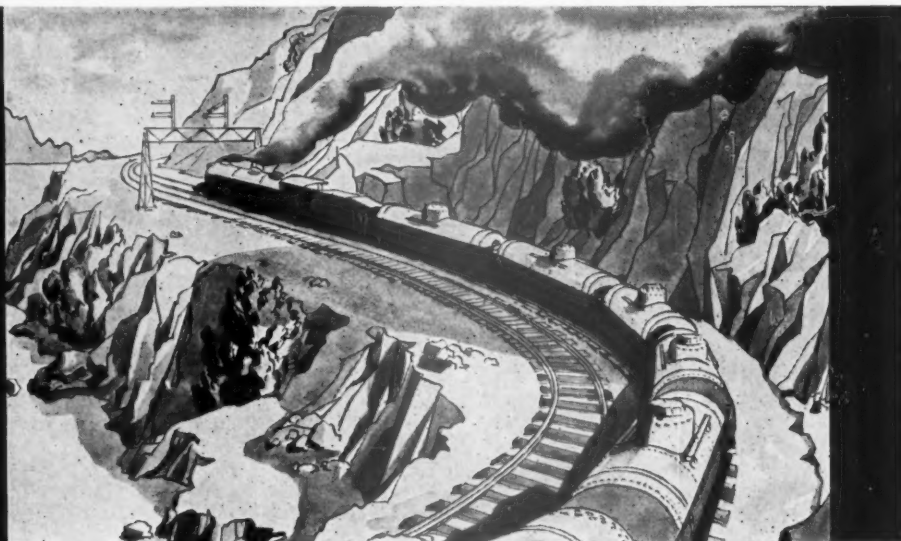
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## Auto Tags Up

California's automobile license plates will come more than 35 per cent higher this year, if purchase recommendations are carried out by State Director of Finance Vandegrift.

State Purchasing Agent Misphey has recommended the State buy its 2,250,000 plates from the Norton Manufacturing Company, Oakland, and the Kittle Manufacturing Company, Los Angeles, for 11½ cents a pair, an increase of 3.3 cents.

## City Savings

Some indication of the curtailment of city departments in their purchase of supplies during the past year is gleaned from the report of City Purchasing Agent Louis J. Dodsworth, Medford, Mass. In 1931 the city expended for various equipment and supplies through his office \$307,213.85 while last year the sum expended was 231,199.30, which is \$76,014.55 less.

Much of this amount saved represented actual savings made in the purchase of supplies and is equal to approximately one dollar on the city's tax rate.

All of the city departments, according to Mr. Dodsworth, cooperated with his department the past year to make possible the considerable savings. He especially mentioned the cooperation of the school, water and sewer and highway departments to effect savings in their purchases.

## Charges Fraud

Failure of the state purchasing agent of Arkansas to follow the law governing sale of products of the state penitentiary farms during the 1931-32 and 1932-33 seasons cost the state approximately \$11,500 in the sale of cotton alone, and the state should take steps immediately to recover from Harry E. Hill of Little Rock and other cotton buyers several thousand dol-

lars obtained in commissions from the sale of the cotton, J. Bryan Sims, chief county accountant for the state comptroller's office, stated in a recent report to Comptroller Griffin Smith.

## State Purchasing

Governor Lehman early this month signed the Dunnigan bill intended to establish a central purchasing department in the New York City administration. The measure had been urged by Tammany as an economic method that would result in a saving of \$5,000,000 a year in the purchase of city supplies.

Purchase of school supplies and text books for the schools is specifically exempted. The measure also provides the Commissioner of Purchasing may exempt from time to time, for a period not to exceed a year, the purchases of any other department or commission.

# A LAW and its TEETH

Time: Friday, June 16, 1933.

Place: Executive Offices, White House,  
Washington, D. C.

Subject: "An Act to encourage national industrial recovery, to foster fair competition, and provide for the construction of certain useful public works, and for other purposes."

• • •

**B**E it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

## Title I — INDUSTRIAL RECOVERY

*Section 1.* A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare and undermines the standards of living of the American people, is hereby declared to exist.

It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof;



TO provide for the general welfare by promoting organization of industry for the purpose of cooperative action among trade groups;

TO induce and maintain united action of labor and management under adequate governmental sanctions and supervision;

TO eliminate unfair competitive practices;

TO promote fullest possible utilization of present productive capacity of industries;

TO avoid undue restriction of production;

TO increase consumption of industrial and agricultural products by increasing purchasing power;

TO reduce and relieve unemployment;

TO improve standards of labor, rehabilitate industry and conserve natural resources.

*Section 2.* (a) To effectuate the policy of this title the President is hereby authorized to establish

*The following pages are devoted to a condensation of the great mass of official data on the most widely discussed subject of the day . . . . . the N R A*

such agencies, utilize such voluntary services, appoint such officers and employees, utilize such Federal officers and employees and, with consent of the State, such State and local officers and employees as he may find necessary.

• • •

## Title II — PUBLIC WORKS AND CONSTRUCTION PROJECTS

*Section 201.* (a) To effectuate the purposes of this title the President is hereby authorized to create a Federal Emergency Administration of Public Works, establish such agencies, utilize such voluntary services, appoint such officers and employees, utilize such Federal officers and employees and, with consent of the State, such State and local officers and employees as he may find necessary.

*Section 304.* This Act may be cited as the

"National Industrial Recovery  
Act"

Approved June 16, 1933,  
11:55 a.m.

(signed) Franklin D. Roosevelt

The above is the gist of the legislation known as the National Industrial Recovery Act (NIRA). The machinery set up to administer this law is the National Recovery Administration (NRA), under the direction of Gen. Hugh Samuel Johnson, Administrator.

Follows a condensed statement by the President of the United States outlining policies of the NRA:

### (President's Statement)

The law I have just signed was passed to *put people back to work*—to let them buy more of the products of farms and factories

and start our business at a living rate again. This task is in two stages—first, to get many hundreds of thousands of the unemployed back on the pay roll by snowfall and second, to plan for a better future for the longer pull. While we shall not neglect the second, the first stage is an emergency job. It has the right of way.

The second part of the act gives employment by a vast program of public works. Our studies show that we should be able to hire many men at once and to step up to about a million new jobs by October 1, and a much greater number later. We must put at the head of

our list those works which are fully ready to start now. Our first purpose is to create employment as fast as we can, but we should not pour money into unproved projects.

Throughout industry, the change from starvation wages and starvation employment to living wages and sustained employment can, in large part, be made by an industrial covenant to which all employers shall subscribe. It is greatly to their interest to do this because decent living, widely spread among our 125,000,000 people eventually means the opening up to industry of the richest



market which the world has known. It is the only way to utilize the so-called excess capacity of our industrial plants. This is the principle that makes this one of the most important laws that ever came from Congress because, before the passage of this act, no such industrial covenant was possible.

On this idea, the first part of the act proposes to our industry a great spontaneous cooperation to put millions of men back in their regular jobs this summer. The idea is simply for employers to hire more men to do the existing work by reducing the work-hours of each man's week and at the same time paying a living wage for the shorter week.

No employer and no group of less than all employers in a single trade could do this alone and continue to live in business competition. But if *all* employers in each trade now band themselves faithfully in these modern guilds—without exception—and agree to act together and at once, none will be hurt and millions of workers, so long deprived of the right to earn their bread in the sweat of their labor, can raise their heads again. The challenge of this law is whether we can sink selfish interest and present a solid front against a common peril.

It is a challenge to industry which has long insisted that, given the right to act in unison, it could do much for the general good which has hitherto been unlawful. From today it has that right.

This law is also a challenge to labor. Workers, too, are here given a new charter of rights long sought and hitherto denied. But they know that the first move expected by the Nation is a great cooperation of all employers, by one single mass action, to improve the case of workers on a scale never attempted in any nation.

It is, further, a challenge to administration. We are relaxing some of the safeguards of the anti-trust laws. The public must be



protected against the abuses that led to their enactment, and to this end we are putting in place of old principles of unchecked competition some new Government controls. They must above all be impartial and just. Their purpose is to free business—not to shackle it—and no man who stands on the constructive forward-looking side of his industry has anything to fear from them.

Finally, this law is a challenge to our whole people. There is no power in America that can force against the public will such action as we require. But there is no group in America that can withstand the force of an aroused public opinion.

I am fully aware that wage increases will eventually raise costs, but I ask that managements give first consideration to the improvement of operating figures by greatly increased sales to be expected from the rising purchasing power of the public. That is good economics and good business. The aim of this whole effort is to restore our rich domestic market by raising its vast consuming capacity. If we now inflate prices as fast and as far as we increase wages, the whole project will be set at naught. We cannot hope for the full effect of this plan unless, in these first critical months, and, even at the expense of full initial profits, we defer price increases as long as possible.

Under title I of this act, I have appointed Hugh Johnson as Administrator and a special Industrial Recovery Board under the chairmanship of the Secretary of Commerce. This organization is now prepared to receive proposed codes and to conduct prompt hearings looking toward their submission to me for approval. While acceptable proposals of no trade

group will be delayed, it is my hope that the 10 major industries which control the bulk of industrial employment can submit their simple basic codes at once and that the country can look forward to the month of July as the beginning of our great national movement back to work.

Between these twin efforts—public works and industrial reemployment, it is not too much to expect that a great many men and women can be taken from the ranks of the unemployed before winter comes. It is the most important attempt of this kind in history. As in the great crisis of the World War, it puts a whole people to the simple but vital test: *"Must we go on in many groping, disorganized, separate units to defeat or shall we move as one great team to victory?"*

• • •

In a bulletin issued by the National Recovery Administration following signing of the Recovery Act, the procedure necessary to comply with the President's suggestion concerning Basic Codes of Fair Competition was set forth:

(2) The National Recovery Administration will receive proposed codes at any time after this date at its office in the Department of Commerce Building, Washington, D. C. Codes may be submitted by mail and will be promptly examined and associations or groups submitting them will be given such suggestions as are appropriate for further action. Consistent with the President's statement, the major industries will so far as practical have the first attention of the Administrator.

As soon as the proposed code is put in proper form, after consultation with those submitting it, due public notice will be given of a date for a hearing on the code, and at such hearing a reasonable opportunity to be heard will be given to all interested parties, including all affected labor groups, and representatives of consumer organizations, the trade associations or

groups submitting codes and any essential minority thereof, other concerns not members thereof, and persons engaged in other steps of the economic process whose service and welfare might be affected by the approval of the proposed code. This hearing will be held by a person designated by the Administrator and there will be present, to advise that person, experts in the industry under consideration and the labor pertaining thereto, who will be chosen under the supervision of the Secretaries of Commerce and Labor, respectively. All other persons or concerns whose cooperation is desirable in connection with the proposed code shall be entitled to attend such hearings.

(3) After such a hearing the proposed code may be modified at the suggestion of the Administration or otherwise and as so modified, if it is agreed to by representatives of the association or group presenting it and ratified by such association or group under such conditions as the Administration may prescribe, it will be presented to the President for his approval or disapproval or suggested modification, and when finally approved by the President, it shall have the effect prescribed by the National Industrial Recovery Act.

(4) In order to carry out the President's suggestion as quoted in paragraph (1) and to effect an immediate reduction of unemployment and increase of mass purchasing power, trade associations or groups are invited to submit without delay a basic code covering only such agreements as are consistent with the policy of the act, respecting maximum hours of labor, minimum rates of wages, and such means as each industry may find necessary to protect its constructive and cooperating majority from the wasteful and unfair competition of minorities or recalcitrants. Additions, modifications, and refinements of such basic codes will be considered later upon application by such associations or groups.



(5) The act requires that certain provisions found in subsection (a) of section 7 shall be included in every code and therefore no application for the approval of any basic code will be received which omits or modifies these mandatory provisions, which are as follows:

Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

(6) *It is not the function of the National Recovery Administration to prescribe what shall be in the codes to be submitted by associations or groups. The initiative in all such matters is expected to come from within the industry itself.* Neither is it the purpose of the Administration to compel the organization of either industry or labor. Basic codes containing provisions respecting maximum hours of labor, minimum rates of pay, and other conditions of employment, which are in themselves satisfactory, will be subject to approval, although such conditions may not have been arrived at by collective bargaining.

In the drafting of codes, attention is especially directed to this suggestion by the President that the Recovery Administration cannot be effective unless the con-

sumer's buying power is protected. There will be full protection for the consumer. The codes should recognize the interest of the public in the matter of prices.

(8) At the hearings described in paragraph (2) every trade association or group proposing a code should be prepared to establish by evidence the requirements of section 3 (a), clause 1, of the act which provides:

that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative to such trades or industries or subdivisions thereof.

and of section 3 (a), clause 2, of the act which provides:

that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title.

(9) It is the purpose of the act to encourage a voluntary submission of codes of fair competition and the procedure offered by these provisions for basic codes is intended to simplify and expedite this process. But in the event that codes of fair competition are not voluntarily submitted, attention is invited to other pertinent provisions of the act. It is provided in section 3 (d) of the act that the President upon his own motion or if complaint is made, may after public notice and hearing prescribe a code of fair competition for a trade or industry or subdivision thereof.

Under the foregoing provisions of the act if no code or agreement establishing standards as to maximum hours of labor, minimum rates of pay, and conditions of employment has been approved by the President, the President is authorized under the foregoing section 7 (e) to prescribe a limited code upon the basis of such investigations and after such hearings as he finds advisable.

Hugh S. Johnson,  
Administrator.

To facilitate and speed up this gigantic program of reemployment



and reap its benefits with the least possible delay President Roosevelt and the big chieftains of the NRA conceived, organized and launched the President's Reemployment Agreement, invariably miscalled "The Blanket Code."

Addressed to all industry, large and small, this document states that:

This Agreement binds you to put its terms into effect from the time you sign the Certificate of Compliance until December 31, 1933; but when the President has approved a Code for your trade or industry, that Code takes the place of this Agreement.

#### YOU AGREE:

##### Child Labor

1. After August 31, 1933, not to employ any person under 16 years of age, except that persons between 14 and 16 may be employed (but not in manufacturing or mechanical industries) for not to exceed 3 hours per day and those hours between 7 a.m. and 7 p.m. in such work as will not interfere with hours of day school.

##### Maximum Hours

2. Not to work any accounting, clerical, banking, office, service, or sales employees (except outside salesmen) in any store, office, department, establishment, or public utility, or on any automotive or horse-drawn passenger, express, delivery, or freight service, or in any other place or manner, for more than 40 hours in any one week and not to reduce the hours of any store or service operation to below 52 hours in any one week, unless such hours were less than 52 hours per week before July 1, 1933, and in the latter case not to reduce such hours at all.

3. Not to employ any factory or mechanical worker or artisan more than a maximum week of 35 hours until December 31, 1933, but with the right to work a maximum week of 40 hours for any 6 weeks within this period; and not to employ any worker more than 8 hours in any one day.



4. The maximum hours fixed in the foregoing paragraphs 2 and 3 shall not apply to employees in establishments employing not more than two persons in towns of less than 2,500 population which towns are not part of a larger trade area; nor to registered pharmacists or other professional persons employed in their profession; nor to employees in a managerial or executive capacity, who now receive more than \$35 per week; nor to employees on emergency maintenance and repair work; nor to very special cases where restrictions of hours of highly skilled workers on continuous processes would unavoidably reduce production but, in any such special case, at least time and one-third shall be paid for hours worked in excess of the maximum. Population for the purposes of this Agreement shall be determined by reference to the 1930 Federal census.

##### Minimum Wages

5. Not to pay any of the classes of employees mentioned in paragraph 2 less than \$15 per week in any city of over 500,000 population, or in the immediate trade area of such city; nor less than \$14.50 per week in any city of between 250,000 and 500,000 population, or in the immediate trade area of such city; nor less than \$14 per week in any city of between 2,500 and 250,000 population, or in the immediate trade area of such city and in towns of less than 2,500 population to increase all wages by not less than 20 per cent, provided that this shall not require wages in excess of \$12 per week.

6. Not to pay any employee of the classes mentioned in paragraph 3 less than 40 cents per hour unless the hourly rate for the same class of work on July 15, 1929, was less than 40 cents per hour, in which latter case not to pay less than the

hourly rate on July 15, 1929, and in no event less than 30 cents per hour. It is agreed that this paragraph establishes a guaranteed minimum rate of pay regardless of whether the employee is compensated on the basis of a time rate or on a piece-work performance.

7. Not to reduce the compensation for employment now in excess of the minimum wages hereby agreed to (notwithstanding that the hours worked in such employment may be hereby reduced) and to increase the pay for such employment by an equitable readjustment of all pay schedules.

##### Antisubterfuge

8. Not to use any subterfuge to frustrate the spirit and intent of this Agreement which is, among other things, to increase employment by a universal covenant, to remove obstructions to commerce, and to shorten hours and to raise wages for the shorter week to a living basis.

##### Antiprofitteering

9. Not to increase the price of any merchandise sold after the date hereof over the price on July 1, 1933, by more than is made necessary by actual increases in production, replacement, or invoice costs of merchandise, or by taxes or other costs resulting from action taken pursuant to the Agricultural Adjustment Act, since July 1, 1933, and, in setting such price increases, to give full weight to probable increases in sales volume and to refrain from taking profiteering advantage of the consuming public.

##### Cooperation

10. To support and patronize establishments which also have signed this agreement and are listed as members of NRA (National Recovery Administration).

##### Codes

11. To cooperate to the fullest extent in having a code of fair competition submitted by his industry at the earliest possible date, and in any event before September 1, 1933.



## Appropriate Adjustments

12. Where, before June 16, 1933, the undersigned had contracted to purchase goods at a fixed price for delivery during the period of this agreement, the undersigned will make an appropriate adjustment of said fixed price to meet any increase in cost caused by the seller having signed this President's reemployment agreement or having become bound by any code of fair competition approved by the President.

## Substitutions

13. This agreement shall cease upon approval by the President of a code to which the undersigned is subject; or, if the NRA so elects, upon submission of a code to which the undersigned is subject and substitution of any of its provisions for any of the terms of this agreement.

## Exceptions

14. It is agreed that any person who wishes to do his part in the President's reemployment drive by signing this agreement, but who asserts that some particular provision hereof, because of peculiar circumstances, will create great and unavoidable hardship, may obtain the benefits hereof by signing this agreement and putting it into effect and then, in a petition approved by a trade association of his industry or other representative organization designated by NRA, may apply for a stay of such provision pending a summary investigation by NRA if he agrees in such application to abide by the decision of such investigation. This agreement is entered into pursuant to section 4 (a) of the National Industrial Recovery Act and subject to all terms and conditions required by sections 7 (a) and 10 (b) of that act.

These are the high spots of the PRA, Washington's symbol for the President's Reemployment Agreement, which in turn is known to the country generally as the Blanket Code.



Efforts to enlist the entire industrial system of the nation under the PRA have been intense. Nationwide radio hook-ups, newspaper campaigns, billboards, parades and a great deal of professional and amateur speechmaking have been drafted to the cause.

Administrator Johnson has assumed a back-breaking share of the burden and is, with only one possible exception, his long-suffering secretary, "Robbie," the most consistently overworked individual in the country. His schedule not permitting him time to dawdle along at 80 miles an hour on trains, he has commandeered an Army plane and leaps at a moment's notice to any locality which seems to require his assistance.

Explaining the purposes behind the government's venture into regulation of competition and supervision of business ethics the General in a speech at Boston told his thousands of listeners:

In the days when your fathers were building these cradles of (political) liberty that have become our shrines, the manly art of boxing was not unknown in the Anglo-Saxon world. But it was different. It was O. K. in those days to insert the ball of your thumb in your opponent's eye socket and gently gouge his eyeball out, or, if the whim seized you and opportunity offered, you could put the point of your knee in his groin and rupture him. . . . Now we have changed all that—in boxing. . . .

In business we were still in the eye-gouging era until Franklin Roosevelt began to revise the rules. . . . Throughout our industry, in greater or less degree, the man who wants to fight fair—to practice his rugged individualism, but to practice it above the belt—that man has always been at the mercy of every economic eye-gouger that chose to gouge. It is a cause of depression and an obstacle to recovery and there is no sense in it. . . .

The government says what it is willing to indorse and support, and the result is a code of fair competition—a sort of Marquis of Queensbury engage-

ment to keep the competitive struggle clean and leave as little human wreckage as possible in its wake.

Contrary to a great deal of popular sentiment on the subject your Uncle Sam has not promised that Utopia will follow close on the heels of the NRA program. He has not sworn that "poverty shall be banished from the earth." Concerning the most radical governmental move in all the history of the United States of America, Uncle Sam himself has taken a wisely conservative stand.

Witness his official statement of policy and purpose regarding the Reemployment Program:

There is no force here except conscience and opinion. This is an appeal to those good instincts of our people which have never been besought in vain. But it is not a ballyhoo campaign. The plan is new; the agreement is not simple and a thorough public program of explanation is needed and will be carried out. After four years of hopeless and seemingly helpless suffering and inaction, it would be unforgivable not to open to the country the chance it now has under this law to unite once more to overcome an emergency and, it may be, to defeat depression.

This is a test of patriotism. It is the time to demonstrate the faith of our fathers and our belief in ourselves. We are a people disciplined by democracy to a self-control—sufficient to unite our purchasing power—our labor power—our management power to carry out this great national covenant with vigor, with determination but with the calm composure and fair play which should always mark the American way.

## Promotion

John H. Lauderdale, native of Clarksville, Tenn., and former general purchasing agent of the Gulf Coast Lines and the International Great Northern railway, has been promoted to general purchasing agent for the entire Missouri Pacific lines.

# Sale Contracts

Continued from page 21

notifying the manufacturer that the goods did not equal the guarantee. Of course, if a buyer disposes of the merchandise without loss he is automatically estopped from refusing to pay for the same on the contention that it did not conform with the guarantee.

Also, it is interesting to observe that the Courts have consistently held that a guarantee is not negotiable. In other words, a manufacturer who gives a guarantee to a buyer is *not* responsible to another who purchases the goods from the original user.

## Law of Cancellations

The principle of the law is firmly established that all parties to a valid contract involving sale of merchandise are bound to fulfill the precise terms of the agreement.

In other words, the instant one party breaches the agreement the other party is privileged to cancel the contract and he has choice of doing either of these three things:

(1) He may refuse to continue on the contract and sue the other party for damages equal to his financial loss resulting from the breach.

(2) Or, he may file suit and compel the other party to fulfill the exact terms of the agreement.

(3) Or, he may notify the other party of the latter's breach and agree to make a supplementary contract.

Also, it is interesting to observe that the Courts have consistently held that a purchaser is privileged to cancel a straight order given a salesman *at any time* up to the moment the seller sends a letter or telegram acknowledging the order. In other words, an order given a salesman for merchandise is merely *an offer* on the part of the buyer, and a valid contract of sale is *not* completed until the seller accepts this offer.

Moreover, it is immaterial whether the purchaser makes a deposit with the order, or whether

the goods are to be manufactured according to special specifications supplied by the buyer.

For illustration, in a leading case decided during the past few weeks, it was shown that a purchaser ordered a quantity of goods from a salesman. The order specified that the buyer's name and address should be imprinted on each article. The salesman required a money deposit with the order and the buyer gave the salesman a deposit check. Both the salesman and the purchaser signed the contract of sale which specified the date shipment should be made and distinctly stated that no cancellation would be accepted.

## No Acknowledgment

The salesman mailed the order immediately to the manufacturer who failed to acknowledge it. Ten days after the order was signed the purchaser wrote to the manufacturer cancelling the order and requested that his deposit be returned. The manufacturer answered this communication and refused to cancel the order or return the purchaser's deposit.

The buyer filed suit to recover the deposit. It is important to know that the Court held the seller bound to cancel the order and return the buyer's deposit. This Court explained that a buyer of merchandise may without liability cancel an order given a salesman if the cancellation reaches the manufacturer *before* the latter acknowledges receipt of it. Also, this Court explained that a manufacturer may without liability refuse to accept an order, although the salesman promises the buyer positively that the contract will be fulfilled.

On the other hand, a contract for purchase of merchandise is valid and enforceable provided the agreement is made verbally or in writing by the purchaser and the manufacturer, or any other persons authorized by the parties to make valid contracts. Also, a series of letters or telegrams may constitute a valid contract, if one party finally

accepts the identical proposal made by the other.

## Damages

Obviously, where two parties enter into a contract, a breach of the same by one party entitles the other to immediately sue and recover damages. Therefore, where a purchaser fails to accept and pay for merchandise, the seller may recover the profits he would have earned had the purchaser fulfilled the terms of the contract. Also, where a purchaser agrees to pay for goods by installments, his failure to promptly make any payment entitles the seller to sue and recover the full balance due immediately.

All contracts of this nature are legally known as *bilateral* agreements, or ones in which *both* contracting parties agree to perform definite acts or things. Generally speaking, if the purchaser refuses to accept goods, the seller is privileged to sell the same in open market and recover from the purchaser the losses sustained.

It is important to know that a purchaser commits a legal breach of a sales contract when he fails to fulfill any part of the agreement made when the seller's offer is accepted. If the seller fails to make delivery at the agreed time, of course the purchaser may, without obligation, refuse to accept delivery at a later date. However, if a seller fails to make shipment on the date specified in the contract the purchaser is bound to accept the shipment *if he demands delivery after* the contract delivery date has expired.

## Determining Damages

Frequently, the Courts have difficulty in arriving at the amount of damages allowable a purchaser who sustains financial losses because of a seller's failure to fulfill the terms of a contract of sale. Ordinarily, a purchaser may sue and recover from a seller damages *fully equal to his loss* of profits which he sustained because the seller failed to fulfill the terms of



the contract. On the other hand, the buyer may rightfully purchase the same kind of goods in the open market or at auction and recover in a suit the difference between the price he paid for the goods and the price specified in the contract.

The amount of damages, where a seller fails to deliver goods according to a contract of sale, is the difference between the original price of the contract and the actual market value of the merchandise when the goods should have been delivered by the seller.

Moreover, when a purchaser attempts to recover anticipated profits as damages resulting from a seller's breach, the Court considers all testimony and renders its verdict according to the estimated loss.

For instance, in one case it was said:

"Where the situation of the parties is such that the breach would probably result in the loss of definite profits, such profits being of an ascertainable nature, the compensation which the law affords to the injured party will embrace these profits . . . or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of the breach of it."

## BOOK REVIEW

*S. A. E. HANDBOOK*, 1933, fabrikoid, 733 pages, 5 1/4 x 8 1/4 inches; published by Society of Automotive Engineers; \$5 plus postage.

All current standards and recommended practices adopted by the society are included in this volume. New and revised specifications issued during a current year are incorporated in the next issue. The volume follows the plan of previous issues, bringing the society's standards to date, with additions adopted during the year.

## Purchasers' Library

*ALLOYS OF IRON AND SILICON*, by Earl S. Greiner, J. S. Marsh and Bradley Stoughton, cloth, 457 pages, 6 x 9 inches, 124 tables, 124 illustrations; published by McGraw-Hill Book Co. Inc.; \$5.00.

This book is the second monograph in a series by the Alloys of Iron Research, the former being on alloys of iron and molybdenum. They are the result of effort by the Engineering Foundation.

The volume is a comprehensive review and critical appraisal of the known facts on alloys of iron and silicon and on the effect of silicon on steel and special cast iron.

In preparation of the volume about 1200 articles were examined, nearly 1000 being found sufficiently important to be studied in detail and abstracted. Reference is made in the text to 478 of them.

• • •

*PATTERNMAKING*, by James Ritchey; revised by Walter W. Monroe, Charles William Beese and Philip Ray Hall; cloth; 223 pages, 5 1/2 x 8 1/2 inches; published by the American Technical society; \$1.75 plus postage.

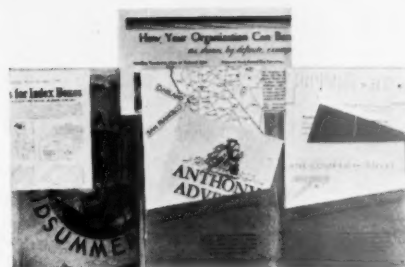
The original author and the men who have had a part in revising this treatise have been identified with the woodworking or patternmaking departments of various engineering and technical schools. P. R. Hall, the final revisor, is instructor of foundry practice, Pennsylvania State college, State College, Pa.

• • •

*STANDARDS AND SPECIFICATIONS FOR METALS AND METAL PRODUCTS*, 1933, cloth, 1359 pages, 7 5/8 x 10 3/8 inches; published by bureau of standards, Washington; \$3 plus postage.

An encyclopedia of specifications, this volume represents an attempt on the part of the department of commerce to collect and publish the substance of the standards and specifications relating to ores, metals and manufactures formulated by the national technical societies, trade associations having national recognition and other organizations which speak for industry or with authority of the federal government.

The chapters cover iron and steel and its manufactures; ferroalloying ores, metals and metal manufacturers; aluminum, antimony, bismuth, cadmium, and cobalt; copper, brass and bronze; lead, mercury and nickel; precious metals, metal jewelry and plated ware; clocks, watches and dials; tin and zinc; miscellaneous ores, metals, alloys and metal manufactures.



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# TRADE MARKS

*Continued from page 16*

between description and suggestion.

At Washington the prime test of descriptiveness in a word or name demanding admission as a trade mark is ascertainment whether or not the term "imparts information." If the term confers upon the hearer or reader information as to the construction, quality, qualifications or uses of the goods, it is descriptive. If, on the other hand, the term merely hints at a service performed or an effect produced by the use of the named article, the imputation may pass muster as merely suggestive, always supposing that the eulogy does not go so far as to prove deceptive or misrepresentative.

While the purposes of professional buyers and the purchasing public are always in the minds of the federal guardians of the language of specification, it is only fair to note that a corresponding solicitude is shown for the rights of competitors of a trade mark owner.

Having determined in each individual case the question of the presence of inherent information in a tentative trade mark, the censor at Washington next addresses himself to the question of whether the grant of a trade mark franchise will leave open to all other traders in the same line all the words necessary or useful in describing any quality or property appertaining to their goods. If it appears that the word or words sought to be registered will be needed to give particulars of competitive or substitute wares, sole possession will not be surrendered even though a claimant has been the first to use the pet terms in a strictly trade mark sense.

To put it differently, if more than one marketer may employ, with equal truth and with equal right, any symbol or form of words to indicate the physical charac-

teristics or properties of goods no one user may take sole possession of the terms via a trade mark monopoly.

How this last-mentioned phase of the protective policy operates in actual application was well illustrated by the attitude of the federal censors toward a maker of pneumatic tools when that concern sought to register the term "Buster" as a trade mark for machines and tools used in demolition work and for vibratory and percussive effects.

Here the issue was not the broad one of the possible need of others to employ the term in description of machines for rivet breaking, slag breaking and core rapping. But rather, the even narrower, but no less important issue, of the status of a term which is the name of the article to which it is applied. The commissioner of patents held that "Buster" was nothing more nor less than the name of the machine. Upon inquiry, the federal censor ascertained that other firms had designated rivet cutting and breaking tools as busters and he therefore ruled: "It seems clear that no one is entitled under the trade mark statutes to preclude others from using a well known trade name for an article."

Lacking here the space to go into the subject fully, it will not do to neglect mention of the fact that one of the most important responsibilities of federal censorship of trade names and marks is concerned with the preservation of "open range" for grade marks. In the early days of American commerce, when the possibilities of grade marking were limited to the use of the familiars such as "A1" "XX" "Fancy," "Select," etc., the mania for trade marking carried no threat to grade marking. But, with the spread of "varietal" marking, etc., efforts have been made to inject a note of individualism into grade marking and, latterly, numerous efforts have been made to register as trade marks, indicia that started life as grade-

marks, quality-marks or piece-marks.

In deference to the changing conditions, the censors accept the fact that, under certain circumstances a brand may be both a trade mark and a grade mark and may be entitled to credentials at the patent office. What remains for eternal vigilance, however, is the preservation to unrestricted use of the grade marks which have an accepted descriptive or classifying meaning in a trade line and which are employed for rating purposes by more than one seller. Often it is necessary for the government to undertake more or less investigation at first hand to ascertain the actual functions of marks before fixing status at the trade mark division.

By and large, though, the determination is constant to withhold sanction for monopoly from any mark which, by its history or current usage signifies broadly the presence of a degree of refinement, a formula in composition, or other characteristics of grade and value, rather than the origin or ownership of the goods.

## EAGLET

General Johnson, NRA chief, has received a letter from a ten-year-old Chinese-American girl, in Brooklyn, asking for a BLUE EAGLE to show that her father "is a good citizen." The letter reads as follows:

5614 New Utrecht Ave.,  
Brooklyn, N. Y.

Dear Gen. Johnson:

May I please have the BLUE EAGLE, I want to show that my father is a good citizen. We are good Chinese people. We are 10 in the family. I will give you the names. Father Hing, Mother Lemshe, Millie, Dorsie, Jennie, Lorraine, Emily, brothers, Shun Chong Wong, Shun S. Wong, Shun Gan Wong. Please may I have the BLUE EAGLE.

Written by Millie Wong,  
10 years old.

## ALLOYS

*Continued from page 18*

could not furnish before. Sometimes a better finish on a less expensive steel will permit you to make a profitable substitution. A lively curiosity as to the whys and wherefores of new mill equipment installations will keep any buyer pretty well in touch with what is going on in steel.

As a final exhortation, I would urge all buyers of steel to keep abreast of the alloys. Steel once was just steel, and all design was obliged to conform to its established properties. Today, steels are literally tailor-made for an almost endless variety of applications—steels with resistance to abrasion, to severe shocks, strains and stresses; steels which resist corrosion and steels which maintain their strength and do not scale at high temperatures; steels with unusual magnetic or electrical properties and many others are now available through the tremendous advances in the science of alloying over the past twenty years.

The amazing evolution of the automobile is responsible for the present highly efficient quantity production of alloy steels, but other lines of industry have been quick to take advantage of the availability of commercial alloy steels. The success of alloy steels in automotive gears, for example, has led to their use in gears for many kinds of machinery.

The ability of the manufacturer of a special product to analyze his own requirements and to select from the many alloy combinations offered by the steel producer that one which fits his case exactly, usually permits the production of a difficult part at a cost that cannot be equalled by the use of ordinary steels. Standards of quality may be set so high that only the selection of specific materials will insure satisfactory commercial production.

This selection of material can be based upon the experience of many users. The otherwise special

product thus becomes a standard product, and may be obtained on short notice, usually from stock. The treatment has been worked out and the user escapes the burden of developing a special production practice.

The most notable alloy development of the past decade has of course been the stainless steels, which have shown amazing growth even in the troubled times from which we are just emerging. They have been used for everything from jewelry to truck tanks for the transportation of milk; from artificial teeth to the spire of the Chrysler building. Buyers not familiar with the exceptional resistance of the stainless alloys to corrosion and to very high temperatures will do well to call in one or more of the leading producers and delve into the mysteries of this newest member of the alloy family.

All of this, I suppose, boils down to what every buyer knows—that to purchase with intelligence it is necessary to study the materials to be purchased from all possible angles. In this article I have attempted to point out one or two ways in which the study of steel may be pursued most systematically and with the least expenditure of time and effort. For all leading steel producers have more to offer the buyer today than ever before in steel history, and the thoughtful buyer is taking full advantage of all the knowledge thus placed at his disposal.

The National Recovery Administration has issued another warning against racketeers who have observed the tremendous success of the Blue Eagle drive and are trying to cash in on public enthusiasm.

The latest word was received from Omaha, Nebraska: the local NRA committee notified the home office at Washington of two men, travelling through the country in a 1932 Chevrolet sedan, who are soliciting signatures for the NRA and charging signers \$2 each.

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## PULSE OF BUSINESS

Continued from page 8

attempted as to raise prices and restore buying power, and criticism should be withheld for the time being at least. Workers now are beginning to get higher wages, and relief demands from charitable organizations are declining. Finished goods prices have advanced quite sharply, however, and the spread between prices and pay rolls is causing some concern. Until earnings have been restored buying of goods must lag somewhat.

Despite these uncertainties, however, in view of the increased costs resulting from the adoption of the codes, the various taxes, etc., higher commodity and retail prices seem to be quite probable, at least in the near future. Although in the past price-fixing schemes for individual commodities ultimately have failed, this is the first attempt in modern times to raise buying power along with prices, so that chances of success therefore are increased.